

## GENERAL INDEX.

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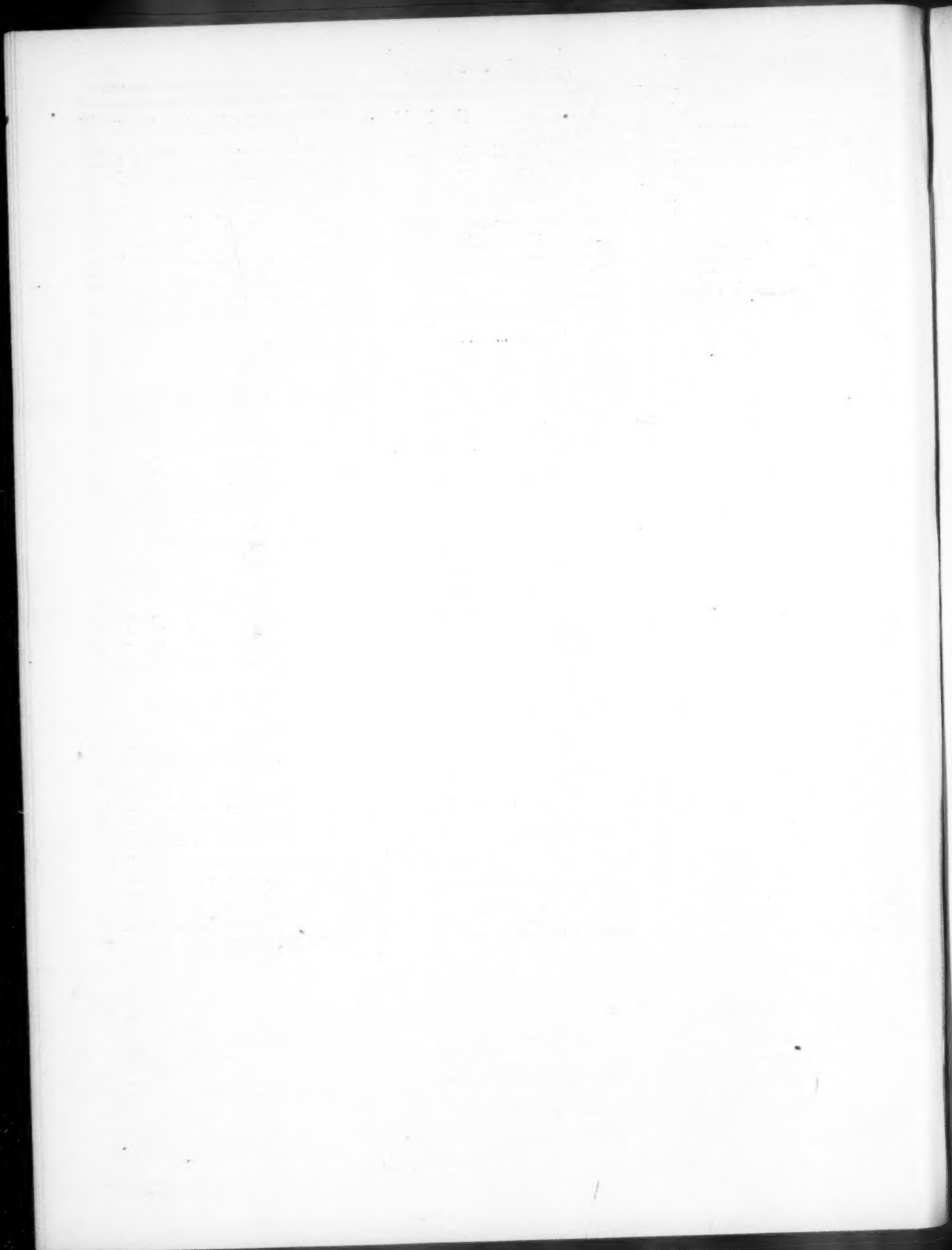
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# STATUTES

Passed in the Autumn Session, 1908.

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## CHAPTER 41.

[*Assizes and Quarter Sessions Act, 1908.*]

An Act to dispense with the Attendance of Jurors at Assizes and Quarter Sessions, and with the Holding of Assizes and Quarter Sessions in certain cases, and to amend the Law relating to the dates at which Quarter Sessions are to be held.

[21st December 1908.]

Be it enacted, &c. :

1. *Notice dispensing with attendance of jurors at assizes or quarter sessions where there is no business for them to transact.*—(1) If, not more than five days before the commission day in the case of assizes, and the day appointed for holding the court in the case of quarter sessions, it appears to the proper officer that the attendance of any jurors summoned to attend at the court of assize or quarter sessions will not be required by reason of there being no business to be transacted for which those jurors are required, that officer may, in manner provided by this Act, cause notice to be sent by post to those jurors by or on behalf of the person who has summoned them dispensing with their attendance in pursuance of the summons, and any person so summoned as juror to whom such a notice is sent shall not be liable to any fine or penalty for failing to attend in pursuance of the summons.

(2) For the purpose of causing notice to be sent under this section, the proper officer, if he is not himself the person who has summoned the jurors, may direct the sheriff, under-sheriff, or other officer who has summoned the jurors to send the required notice, and that officer shall send the notice as so directed.

(3) Where the proper officer causes notices to be sent to jurors dispensing with their attendance, he shall at the same time send information thereof to all clerks to justices in the county or area for which the assizes or quarter sessions are to be held, and those justices shall, after the receipt of that information, in committing any person for trial, act as if the assizes or quarter sessions were not to be held :

Provided that the justices may, if they think fit, for the purpose of enabling any person who would have been committed for trial at any such assizes or quarter sessions to have an early trial in case he is not admitted to bail, commit him for trial at any other assizes or quarter sessions about to be held at any place or town convenient for the trial, and His Majesty may by Order in Council make such provisions as to the jurisdiction of the court, and the attendance, jurisdiction, authority, and duty of sheriffs, gaolers, officers, jurors, and persons, the use of any prison, the removal of prisoners, the alteration of any commissions, writs, precepts, indictments, recognizances, proceedings, and documents, the transmission of recognizances, inquisitions, and documents, and the expenses of prosecutors and witnesses, and of maintaining and removing prisoners, as seem necessary or expedient to carry into effect this provision, but :—

(a) the costs and expenses of any prosecutors and witnesses shall be paid by the council of the county or borough who would have been liable to pay those costs and expenses if the person

had been committed for trial in the ordinary course ; and

(b) the council of the county or borough who would have paid the costs of the trial of the person, if he had been committed in the ordinary course, shall pay to the council of the county or borough by whom the costs of the assizes or quarter sessions to which he is committed under this provision are paid, such sum on account of his trial as may be agreed upon between the councils, or, in default of agreement, determined by the Secretary of State.

If the justices have already committed any person for trial at the assizes or quarter sessions in respect of which notices have been sent under this section, they shall have power to alter the committal, and to make any alteration or extension of any recognizances which may appear necessary under the circumstances.

(4) Any warrant for arresting or detaining any person, and any recognizance to appear and give evidence, or to appear for trial, issued or taken in the case of a person charged with murder or manslaughter on a coroner's inquisition, shall, if the trial of the person charged cannot take place in the ordinary course owing to assizes to which the warrant or recognizances relate not being held by virtue of the provisions of this Act, continue in operation until the next assizes, or, if the person charged is committed to any other assizes by justices, such other assizes.

(5) Any person having by law a right to present a bill of indictment to a grand jury in a case where no person has been committed for trial, and proposing to do so at any assizes or quarter sessions, shall give notice of his intention to do so to the proper officer more than five days before the commission day or day appointed for holding the court of quarter sessions, as the case may be.

2. *Obligation to hold assizes and quarter sessions dispensed with in certain cases.*—Where notices have been given in pursuance of this Act dispensing with the attendance of all jurors at any assizes or quarter sessions, it shall not be necessary to hold the court of assize or court of quarter sessions in respect of which the notices have been given unless there is any business not requiring the attendance of jurors to be transacted by the court.

3. *Extension of time in which county quarter sessions are to be held.*—(1) A court of quarter sessions for a county, or the justices of the county assembled at special meeting (which special meeting they are hereby authorised to hold), may at any time when it appears desirable, for any purpose fix or alter the time for holding the next court of quarter sessions, so that the sessions be held not earlier than fourteen days before nor later than fourteen days after the week in which they would otherwise be held.

(2) The Quarter Sessions Act, 1894 [57 & 58 Vict. c. 6], is hereby repealed.

4. *Definitions.*—For the purposes of this Act—The expression "proper officer" means, as respects assizes, the clerk of assize, and, as respects quarter sessions, the clerk of the peace of the county or borough for which the court of quarter sessions is held ; and

The expression "commission day" means the day named in the London Gazette as the day appointed for the holding of assizes at any place.

5. *Short title.*—This Act may be cited as the Assizes and Quarter Sessions Act, 1908.

## CHAPTER 42.

[*White Phosphorus Matches Prohibition Act, 1908.*]

An Act to prohibit the Manufacture, Sale, and Importation of Matches made with White Phosphorus, and for other purposes in connection therewith.

[21st December 1908.]

Be it enacted, &c. :

1. *Prohibition of use of white phosphorus in manufacture of matches.*—(1) It shall not be lawful for any person to use white phosphorus in the manufacture of matches, and any factory in which white phosphorus is so used shall be deemed to be a factory not kept in conformity with the Factory and Workshop Act, 1901 [1 Edw. 7. c. 22], and that Act shall apply accordingly.

(2) The occupier of any factory in which the manufacture of matches is carried on shall allow an inspector under the Factory and Workshop Act, 1901, at any time to take for analysis sufficient samples of any material in use or mixed for use, and, if he refuses to do so, shall be guilty of obstructing the inspector in the execution of his duties under that Act.

Provided that the occupier may, at the time when the sample is taken, and on providing the necessary appliances, require the inspector to divide the sample so taken into two parts and to mark, seal, and deliver to him one part.

2. *Prohibition of sale.*—It shall not be lawful for any person to sell or to offer or expose for sale or to have in his possession for the purposes of sale any matches made with white phosphorus, and, if any person contravenes the provisions of this section, he may on complaint to a court of summary jurisdiction, be ordered to forfeit any such matches in his possession, and any matches so forfeited shall be destroyed or otherwise dealt with as the court may think fit, but this provision shall not come into operation as respects any retail dealer until the first day of January, nineteen hundred and eleven.

3. *Prohibition of importation.*—It shall not be lawful to import into the United Kingdom matches made with white phosphorus, and matches so made shall be included amongst the goods enumerated and described in the table of prohibitions and restrictions contained in section forty-two of the Customs Consolidation Act, 1876 [39 & 40 Vict. c. 36].

4. *Compulsory licence to use patents.*—(1) Any person who is manufacturing or proposing to manufacture matches by way of trade may present a petition to the Board of Trade, praying for the grant of a compulsory licence to use any process patented at the passing of this Act for the manufacture of matches without white phosphorus, other than matches intended to strike only on a surface specially prepared for the purpose.



(2) The Board of Trade, after considering any representations that may be made by the patentee as defined by the Patents and Designs Act, 1907 [7 Edw. 7. c. 29], and any person claiming an interest in the patent as exclusive licensee or otherwise, and, after consultation with the Secretary of State, may order the patentee to grant a licence to the petitioner on such terms as the Board may think just. The provisions of the Board of Trade Arbitrations, &c., Act, 1874 [37 & 38 Vict. c. 40] shall apply to proceedings under this section as if this Act were a special Act within the meaning of that Act.

(3) An order of the Board directing the grant of a licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence and made between the petitioner and the patentee and such other persons claiming an interest in the patent as aforesaid.

**5. Short title, commencement, and construction.]**

—(1) This Act may be cited as the White Phosphorus Matches Prohibition Act, 1908, and shall, except as otherwise expressly provided, come into operation on the first day of January nineteen hundred and ten.

(2) For the purposes of this Act the expression "white phosphorus" means the substance usually known as white or yellow phosphorus.

**CHAPTER 43.**

**[Local Authorities (Admission of the Press to Meetings) Act, 1908.]**

An Act to provide for the Admission of Representatives of the Press to the Meetings of certain Local Authorities.

[21st December 1908.]

Be it enacted, &c. :

**1. Representatives of the press to be admitted to the meetings of a local authority subject to a proviso.]** Representatives of the press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.

**2. Definitions.]** For the purposes of this Act the expression "local authority" means—

(a) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the Local Government Act, 1894 [56 & 57 Vict. c. 73].

(b) An education committee and a joint education committee, established under section seventeen of the Education Act, 1902 [2 Edw. 7. c. 42], so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval;

(c) A board of guardians, and a joint committee constituted in pursuance of section eight of the Poor Law Act, 1879 [42 & 43 Vict. c. 54], and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor;

(d) A central body and a distress committee under the Unemployed Workmen Act, 1905 [5 Edw. 7. c. 18];

(e) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order;

(f) Any other local body which has, or may hereafter have, the power to make a rate.

The expression "rate" means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate.

The expression "representatives of the press" means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

**3. Saving for committee meetings.]** This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority.

**4. Powers of committee.]** Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the press to its meetings.

**5. Admission of the public.]** Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings.

**6. Application to Scotland.]** In the application of this Act to Scotland—

(1) The expression "local authority" means—

(a) a county council, a town council, a parish council, a school board, and a district committee constituted under the Local Government (Scotland) Acts; (b) a central body and a distress committee under the Unemployed Workmen Act, 1905;

(c) any other local body, board, joint board, or committee which has or may hereafter have the power to impose a rate as defined in section two of this Act, and which does not require to report its proceedings to any other local authority;

(2) The definition of the expression "local authority," in section two of this Act, shall not apply to Scotland.

**7. Short title and extent.]**—(1) This Act may be cited as the Local Authorities (Admission of the Press to Meetings) Act, 1908.

(2) This Act shall not extend to Ireland.

**CHAPTER 44.**

**[Commons Act, 1908.]**

An Act to regulate the turning out upon Commons of Entire Animals.

[21st December 1908.]

Be it enacted, &c. :

**1. Power of making regulations as to the turning out of entire animals on commons.]**—(1) The persons for the time being entitled to turn out animals on a common at a meeting convened in a manner provided by this Act may, by a resolution passed by a majority in value of interest of the persons present by themselves or by their proxy or attorney,—

(a) Make, alter, or revoke regulations for determining the times, if any, at which and the conditions under which entire animals or entire animals of any class or description or age specified in the regulation may be upon the common, and for authorising the removal by an officer appointed to enforce the regulations of any animal found upon the common in contravention of the regulations, and the detention and disposal of any animal so removed, and for raising such sums as may be necessary for defraying expenses incurred in making, publishing, or enforcing the regulations, either by annual contributions payable by the persons for the time being entitled to turn out animals on the

common, or by way of an annual payment in respect of each animal turned out on the common, and for prescribing the person to receive or sue for such payments;

(b) Appoint and remove, or provide for the appointment and removal of, officers to enforce any such regulations;

(c) Constitute and regulate the constitution of a committee consisting of persons entitled to turn out animals on the common, and delegate to the committee such of the powers exercisable by resolution under this Act as may be specified in the resolution;

but no such regulations and no alteration or revocation thereof shall take effect unless and until they have been confirmed by the Board of Agriculture and Fisheries, and the Board may confirm them either without modification or subject to such modifications as the Board, after considering any objections by persons appearing to the Board to be interested, consider desirable.

(2) The owner of any animal which is found on any common in contravention of a regulation made under this Act, and any person who obstructs any officer appointed under this Act in the execution or enforcement of a regulation, shall be liable on summary conviction to a fine not exceeding two pounds, or in the case of a continuing offence not exceeding ten shillings for every day during which the offence continues; and where a fine is recovered on the information of an officer appointed under this Act the court may direct the whole or any part of the penalty to be paid to such officer, to be applied by him towards the expenses of enforcing the regulations made under this Act.

(3) A meeting for the purposes of this Act may be convened in respect of any common by the Board of Agriculture and Fisheries upon the application of any three persons claiming to be entitled to turn out animals upon the common or of the council of the county in which any part of the common is situate.

(4) The value of the interest of any person for the time being entitled to turn out animals on a common shall be ascertained, and a meeting for the purposes of this Act shall be convened and held, and proxies and attorneys shall be appointed, in accordance with rules made by the Board of Agriculture and Fisheries.

(5) If any question arises as to whether a resolution has been passed by the required majority, the question shall be settled by the Board of Agriculture and Fisheries, whose decision shall be final for the purposes of this Act, but such decision shall not otherwise affect or prejudice any right or claim in respect of the common.

(6) No regulation approved by the Board of Agriculture and Fisheries shall be questioned on the ground of informality, and the Documentary Evidence Acts, 1868 to 1895, shall apply to regulations so approved as if they were regulations issued by the Board.

(7) For the purposes of this Act two or more adjoining commons may, by order of the Board of Agriculture and Fisheries, be declared to be one common, and shall be treated as such accordingly.

(8) This Act shall apply to a common notwithstanding that the soil of the common is vested in His Majesty by right of His Crown or His Duchy of Lancaster or forms part of the possessions of the Duchy of Cornwall, but shall not apply to the New Forest or to any common in respect of which the conservators or other body appointed by or under any Act of Parliament to regulate the common have powers of making bye-laws in respect of matters for which regulations may be made under this Act.

(9) In this Act the expression "animals" means horses, asses, cattle, sheep, goats, and swine, and the expression "common" includes any commonable land.

**2. Application of Act to Dartmoor.]** The powers by this Act conferred on the persons for the time being entitled to turn out animals on a common (except the power to raise money) may in the case of the forest or chase of Dart-

moor be exercised by the Duke of Cornwall, but so that a regulation shall not be submitted for confirmation until it has been approved by a resolution passed by a majority in value of interest of the persons for the time being entitled to turn out animals on the forest or chase, present by themselves or by their proxy or attorney at a meeting of such persons convened in manner provided by this Act, and the provisions of this Act shall apply to the forest or chase accordingly.

3. *Short title and extent.*—(1) This Act may be cited as the Commons Act, 1908.

(2) This Act shall not extend to Scotland or Ireland.

#### CHAPTER 45.

##### [Punishment of Incest Act, 1908.]

An Act to provide for the punishment of Incest.

[21st December 1908.]

Be it enacted, &c.:

1. *Incest by males.*—(1) Any male person who has carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister or mother, shall be guilty of a misdemeanour and upon conviction thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not less than three years, and not exceeding seven years, or to be imprisoned for any time not exceeding two years with or without hard labour: Provided that if, on an indictment for any such offence, it is alleged in the indictment and proved that the female person is under the age of thirteen years, the same punishment may be imposed as may be imposed under section four of the Criminal Law Amendment Act, 1885 [48 & 49 Vict. c. 69] (which deals with the defilement of girls under thirteen years of age).

(2) It is immaterial that the carnal knowledge was had with the consent of the female person.

(3) If any male person attempts to commit any such offence as aforesaid, he shall be guilty of a misdemeanour, and upon conviction thereof shall be liable at the discretion of the court to be imprisoned for any time not exceeding two years with or without hard labour.

(4) On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under twenty-one years of age, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such female during her minority or any less period:

Provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

2. *Incest by females of or over sixteen.* Any female person of or above the age of sixteen years who with consent permits her grandfather, father, brother, or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother, or son, as the case may be) shall be guilty of a misdemeanour, and upon conviction thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not less than three years, and not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years.

3. *Test of relationship.* In this Act the expressions "brother" and "sister," respectively, include half-brother and half-sister, and the provisions of this Act shall apply whether the relationship between the person charged with an offence under this Act and the person with whom the offence is alleged to have been committed, is or is not traced through lawful wedlock.

4. *Prosecution of offences.*—(1) An offence under this Act shall be deemed to be an offence within, and subject to, the provisions of the Vexatious Indictments Act, 1859, 22 & 23 Vict. c. 17, and any Act amending the same.

(2) A court of quarter sessions shall not have jurisdiction to enquire of, hear, or determine any indictment for an offence against this Act, or for an attempt to commit any such offence.

(3) If, on the trial of any indictment for rape, the jury are satisfied that the defendant is guilty of an offence under this Act, but are not satisfied that the defendant is guilty of rape, the jury may acquit the defendant of rape and find him guilty of an offence under this Act, and he shall be liable to be punished accordingly.

If, on the trial of any indictment for an offence under this Act, the jury are satisfied that the defendant is guilty of any offence under sections four or five of the Criminal Law Amendment Act, 1885, but are not satisfied that the defendant is guilty of an offence under this Act, the jury may acquit the defendant of an offence under this Act, and find him guilty of an offence under sections four or five of the Criminal Law Amendment Act, 1885, and he shall be liable to be punished accordingly.

(4) Section 4 of the Criminal Evidence Act, 1898, shall have effect as if this Act were included in the schedule to that Act.

5. *Proceedings to be held in camera.* All proceedings under this Act are to be held in camera.

6. *Sanction of Attorney-General.* No prosecution for any offence under this Act shall be commenced without the sanction of His Majesty's Attorney-General, but this section shall not apply to any prosecution commenced by or on behalf of the Director of Public Prosecutions.

7. *Extent.* This Act shall not extend to Scotland.

8. *Short title and commencement.* This Act may be cited as the Punishment of Incest Act, 1908, and shall come into operation on the first day of January one thousand nine hundred and nine.

#### CHAPTER 46.

##### [Criminal Appeal (Amendment) Act, 1908.]

An Act to amend the Criminal Appeal Act, 1907, with reference to the Judges of the Court of Criminal Appeal and the Registrar.

[21st December 1908.]

Be it enacted, &c.:

1. *Judges of the Court of Criminal Appeal.* Notwithstanding anything in section one of the Criminal Appeal Act, 1907 [7 Edw. 7. c. 23], all the judges of the King's Bench Division of the High Court shall be judges of the Court of Criminal Appeal.

2. *Registrar of the Court of Criminal Appeal.*—(1) Notwithstanding anything in section two of the Criminal Appeal Act, 1907, from and after the passing of this Act the Master of the Crown Office shall be the Registrar of the Court of Criminal Appeal.

(2) The power to provide additional staff for the Registrar of the Court of Criminal Appeal includes a power to appoint an Assistant Registrar, but any Assistant Registrar so appointed shall be either a Master of the Supreme Court acting in the King's Bench Division or a practising barrister of not less than seven years' standing, and shall be appointed by the Lord Chief Justice of England.

3. *Short title.* This Act may be cited as Criminal Appeal (Amendment) Act, 1908.

#### CHAPTER 47.

##### [Lunacy Act, 1908.]

An Act to amend the Lunacy Acts, 1890 and 1891.

[21st December 1908.]

Be it enacted, &c.:

1. *Extension to quasi-committees of powers of committees with respect to management of property.* In the case of any of the persons mentioned in sub-section (1) of section one hundred and sixteen of the Lunacy Act, 1890 [53 & 54 Vict. c. 5], not being a lunatic so found by inquisition, any powers which, if such person were a lunatic so found by inquisition, could be exercised by the committee of the estate, may be exercised by such person in such manner, and with or without security, as the Judge in Lunacy, or, subject to rules in Lunacy, a Master may direct, and any such order may confer on the

person therein named authority to do any specified act or exercise any specified power, or may confer a general authority to exercise until further order all or any of such powers without further application to the Judge or a Master, and sub-section (3) of the said section shall apply to every person so appointed, and sub-section (2) of the said section shall be repealed.

2. *Amendment of section 135 of the Lunacy Act, 1890.* The following sub-section is substituted for sub-section three of section one hundred and thirty-five of the Lunacy Act, 1890:

"(3) An order under sub-sections one and two shall have the same effect as if the lunatic had been sane, and, if solely seised, possessed, or entitled as aforesaid, had executed, or, if jointly seised, possessed, or entitled as aforesaid with any other person or persons, he and such other person or persons had executed a deed conveying the land for the estate named in the order, or releasing or disposing of the contingent right."

3. *Orders of Judge and Masters in Lunacy.* Every order of the Masters shall be subject to appeal in the manner provided by Rules in Lunacy, and orders of the Judge in Lunacy and Masters shall be enforceable in manner provided by those rules, which may confer on the Judge and Masters any of the powers exercisable by the High Court or the Judges or Masters thereof for the purpose of enforcing orders of the High Court.

4. *Power to appoint Deputy-Master.* In case of the illness or unavoidable absence of a Master, the Lord Chancellor may appoint a barrister of not less than ten years' standing to be his deputy during such illness or absence, and such deputy shall, while his appointment remains in force, have all the powers and perform all the duties of a Master.

5. *Short title, &c.* This Act may be cited as the Lunacy Act, 1908, and shall be read as one with the Lunacy Acts, 1890 and 1891, and those Acts and this Act may be cited together as the Lunacy Acts, 1890 to 1908.

#### CHAPTER 48.

##### [Post Office Act, 1908.]

An Act to consolidate Enactments relating to the Post Office.

[21st December 1908.]

#### CHAPTER 49.

##### [Statute Law Revision Act, 1908.]

An Act for further promoting the Revision of the Statute Law by repealing Enactments which have ceased to be in force or have become unnecessary.

[21st December 1908.]

#### CHAPTER 50.

##### [Crofters Common Grazings Regulation Act, 1908.]

An Act to extend the powers of the Crofters Commission in regard to the regulation of common grazings.

[21st December 1908.]

#### CHAPTER 51.

##### [Appellate Jurisdiction Act, 1908.]

An Act to amend the Law with respect to the Judicial Committee of the Privy Council, and the Court of Appeal in England.

[21st December 1908.]

Be it enacted, &c.:

1. *Power to direct colonial judge to act as assessor of the Judicial Committee on hearing of appeals from the colony.*—(1) For the purpose of the hearing of any appeal to His Majesty in Council from any court in a British possession, His Majesty may, if he thinks fit, authorise any person who is or has been a judge of the court from which the appeal is made, or a judge of a court to which an appeal lies from the court from which the appeal is made, and whose ser-



VICES are for the time being available, to attend as an assessor of the Judicial Committee of the Privy Council on the hearing of the appeal.

(2) This section shall not apply to any British possession except the possessions specified in the schedule to this Act and any possession which may hereafter be added to that schedule in Order in Council.

**2. Provision as to persons being or having been judges in British India.**—(1) If any person being or having been chief justice or judge of any High Court in British India is a member of His Majesty's Privy Council, he shall, if His Majesty so directs, be a member of the Judicial Committee of the Privy Council.

(2) The number of persons being members of the Judicial Committee by reason of this section shall not exceed two at any one time.

(3) In this section the expression "High Court in British India" means the High Court of Bengal, Madras, Bombay, or the North-Western Provinces, or any other Court in British India which may for the time being be recognised for the purpose by Order in Council.

**3. Extension of 53 & 59 Vict. c. 44.**—(1) Section 1 of the Judicial Committee Amendment Act, 1895, shall have effect as if the persons named therein included any person being or having been chief justice or a justice of the High Court of Australia or chief justice or judge of the Supreme Court of Newfoundland.

(2) The Schedule to the Judicial Committee Amendment Act, 1895, shall be read as if the Transvaal and the Orange River Colony were included therein as South African Colonies.

**4. Resignation of members of the Judicial Committee.** Any member of the Judicial Committee of the Privy Council may resign his office as member of that Committee by giving notice of his resignation in writing to the Lord President of the Council.

**5. Power to make continuing Order instead of annual Order directing appeals to be referred to Judicial Committee.** His Majesty may from time to time by Order in Council make a general Order directing that all appeals shall be referred to the Judicial Committee of the Privy Council until the Order is rescinded, and section 9 of the Judicial Committee Act, 1844 [7 & 8 Vict. c. 69], shall have effect as if any such general Order for the time being in force were substituted in the first proviso to that section for the annual Order therein referred to, and the time for which the Order remains in force were substituted for the twelve months next after the making of the general Order. The expression "appeals" in this section means appeals on petitions presented to His Majesty in Council, and includes any complaints in the nature of appeals and any petitions in the matter of appeals.

**6. Attendance of a judge of the High Court in the Court of Appeal.**—(1) The Lord Chancellor may request the attendance at any time of any judge of the High Court to sit as an additional judge at the sittings of the Court of Appeal, and any judge whose attendance is so requested shall attend accordingly.

(2) Every judge who attends in pursuance of this section shall be deemed to be an additional judge within the meaning of section 4 of the Supreme Court of Judicature Act, 1875 [38 & 39 Vict. c. 77], and section 19 of the Appellate Jurisdiction Act, 1876 [39 & 40 Vict. c. 59] (which relate to the constitution of the Court of Appeal).

(3) The fifth paragraph of section 4 of the Supreme Court of Judicature Act, 1875, beginning with the words "The Lord Chancellor," and ending with the words "attend accordingly," is hereby repealed.

**7. Short title and construction.**—(1) This Act may be cited as the Appellate Jurisdiction Act, 1908.

(2) The provisions of this Act shall be in addition to and shall not affect any other enactment for the appointment of or relating to members of the Judicial Committee.

## SCHEDULE.

## [Section 1.]

British India.  
The Dominion of Canada.  
The Commonwealth of Australia.  
The Dominion of New Zealand.  
Cape of Good Hope.  
Natal.  
Transvaal.  
Orange River Colony.  
Newfoundland.

## CHAPTER 52.

## [Post Office Savings Bank (Public Trustee) Act, 1908.]

An Act to amend the Post Office Savings Bank Acts, 1861 to 1908, with respect to deposits by the Public Trustee.

[21st December 1908.]

Be it enacted, &c.:

**1. Deposits by Public Trustee.**—(1) Such of the provisions of the Post Office Savings Bank Acts, 1861 to 1908, and the regulations made thereunder as relate to the declaration to be made by a depositor, and as prohibit a depositor having more than one account, shall not apply to the Public Trustee; and accordingly for the purposes of those Acts and regulations each account of the Public Trustee shall be deemed to be the account of a separate depositor, but the Public Trustee shall not open more than one account in relation to any one trust, and regulations shall be made under those Acts for carrying into effect the provisions of this Act, and for sanctioning the transfer to the Public Trustee of deposits standing in the names of deceased depositors whose estates he is administering.

(2) Any person deriving any benefit under any moneys or Government stock standing in the Post Office Savings Bank, in the name of the Public Trustee, may nevertheless open an account in the Post Office Savings Bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulation respecting the opening of accounts in more than one savings bank or of two accounts in the same savings bank.

**2. Short title.** This Act may be cited as the Post Office Savings Bank (Public Trustee) Act, 1908, and may be cited with the Post Office Savings Bank Acts, 1861 to 1908, as the Post Office Savings Bank Acts, 1861 to 1908.

## CHAPTER 53.

## [Law of Distress Amendment Act, 1908.]

An Act to amend the Law as regards a Landlord's right of Distress for Rent.

[21st December 1908.]

Be it enacted, &c.:

**1. Under tenant or lodger, if distress levied, to make declaration that immediate tenant has no property in goods distrained.** If any superior landlord shall levy, or authorise to be levied, a distress on any furniture, goods, or chattels of—

- (a) any under tenant liable to pay by equal instalments not less often than every actual or customary quarter of a year a rent which would return in any whole year the full annual value of the premises or of such part thereof as is comprised in the under tenancy, or
- (b) any lodger, or
- (c) any other person whatsoever not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof,

for arrears of rent due to such superior landlord by his immediate tenant, such under tenant, lodger, or other person aforesaid may serve such superior landlord, or the bailiff or other agent employed by him to levy such distress, with a declaration in writing made by such under tenant, lodger, or other person aforesaid, setting forth that such immediate tenant has no right of

property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture, goods, or chattels are the property or in the lawful possession of such under tenant, lodger, or other person aforesaid, and are not goods or live stock to which this Act is expressed not to apply; and also, in the case of an under tenant or lodger, setting forth the amount of rent (if any) then due to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, and containing an undertaking to pay to the superior landlord, any rent so due or to become due to his immediate landlord, until the arrears of rent in respect of which the distress was levied or authorised to be levied have been paid off, and to such declaration shall be annexed a correct inventory, subscribed by the under tenant, lodger, or other person aforesaid, of the furniture, goods, and chattels referred to in the declaration; and, if any under tenant, lodger, or other person aforesaid, shall make or subscribe such declaration and inventory knowing the same or either of them to be untrue in any material particular, he shall be deemed guilty of a misdemeanour.

**2. Penalty.** If any superior landlord, or any bailiff or other agent employed by him, shall, after being served with the before-mentioned declaration and inventory, and in the case of an under tenant or lodger after such undertaking as aforesaid has been given, and the amount of rent (if any) then due has been paid or tendered in accordance with that undertaking, levy or proceed with a distress on the furniture, goods, or chattels of the under tenant, lodger, or other person aforesaid, such superior landlord, bailiff, or other agent shall be deemed guilty of an illegal distress, and the under tenant, lodger, or other person aforesaid, may apply to a justice of the peace for an order for the restoration to him of such goods, and such application shall be heard before a stipendiary magistrate, or before two justices in places where there is no stipendiary magistrate, and such magistrate or justices shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him or them may seem just, and the superior landlord shall also be liable to an action at law at the suit of the under tenant, lodger, or other person aforesaid, in which action the truth of the declaration and inventory may likewise be inquired into.

**3. Payments by under tenant or lodger to superior landlord.** For the purposes of the recovery of any sums payable by an under tenant or lodger to a superior landlord under such an undertaking as aforesaid, or under a notice served in accordance with section six of this Act, the under tenant or lodger shall be deemed to be the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent; but where the under tenant or lodger has, in pursuance of any such undertaking or notice as aforesaid, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorised to be levied) from whose rent a deduction has been made in respect of such a payment may make the like deductions from any rent due or which may become due from him to his immediate landlord.

**4. Exclusion of certain goods.** This Act shall not apply—

- (1) to goods belonging to the husband or wife of the tenant whose rent is in arrear, nor to goods comprised in any bill of sale, hire purchase agreement, or settlement made by such tenant, nor to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof, nor to any live stock to which section twenty-nine of the Agricultural Holdings Act, 1908 [8 Edw. 7. c. 29], applies;



- (2) (a) to goods of a partner of the immediate tenant; (b) to goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under tenant have an interest; (c) to goods (not being goods of a lodger) on premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in like manner as a notice to quit) to remove the goods and vacate the premises; (d) to goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment of such company or corporation:

Provided that it shall be competent for a stipendiary magistrate, or where there is no stipendiary magistrate for two justices, upon application by the superior landlord or any under tenant or other such person as aforesaid, upon hearing the parties to determine whether any goods are in fact goods covered by sub-section (2) of this section.

5. *Exclusion of certain under tenants.*] This Act shall not apply to any under tenant where the under tenancy has been created in breach of any covenant or agreement in writing between the landlord and his immediate tenant, or where the under tenancy has been created under a lease existing at the date of the passing of this Act contrary to the wish of the landlord in that behalf, expressed in writing and delivered at the premises within a reasonable time after the circumstances have come, or with due diligence would have come, to his knowledge.

6. *To avoid distress.*] In cases where the rent of the immediate tenant of the superior landlord is in arrear it shall be lawful for such superior landlord to serve upon any under tenant or lodger a notice (by registered post addressed to such under tenant or lodger upon the premises) stating the amount of such arrears of rent, and requiring all future payments of rent, whether the same has already accrued due or not, by such under tenant or lodger to be made direct to the superior landlord giving such notice until such arrears shall have been duly paid, and such notice shall operate to transfer to the superior landlord the right to recover, receive, and give a discharge for such rent.

7. *Commencement of Act.*] This Act shall come into operation on the first day of July one thousand nine hundred and nine.

8. *Repeal of 34 & 35 Vict. c. 79.*] The Lodgers' Goods Protection Act, 1871, shall, wherever and so far as this Act applies, be repealed as from the commencement of this Act.

9. *Definitions.*] In this Act the words "superior landlord" shall be deemed to include a landlord in cases where the goods seized are not those of an under tenant or lodger; and the words "tenant" and "under tenant" do not include a lodger.

10. *Act not to extend to Scotland.*] This Act shall not extend to Scotland and shall only apply in Ireland to a rent issuing out of lands or tenements situate wholly within the boundaries of a municipality or of a township having town commissioners.

11. *Short title.*] This Act may be cited as the Law of Distress Amendment Act, 1908.

#### CHAPTER 54.

[East India Loans Act, 1908.]

An Act to empower the Secretary of State in Council of India to raise money in the United Kingdom for the Construction, Extension, and Equipment of Railways in India by State Agency, or through the Agency of Companies, for the Construction of Irrigation Works; and for other purposes.

[21st December 1908.]

#### CHAPTER 55.

[Poisons and Pharmacy Act, 1908.]

An Act to regulate the sale of certain Poisonous Substances and to amend the Pharmacy Acts. [21st December 1908.]

Be it enacted, &c.:

1. *Amendment of 31 & 32 Vict. c. 121, Schedule A.*—(1) Schedule A. to the Pharmacy Act, 1868 (which specifies the articles to be deemed poisons within the meaning of that Act), is hereby repealed, and the schedule to this Act shall be substituted therefor.

(2) The schedule to this Act may be amended by adding thereto or removing therefrom any article, or by transferring any article from one part of the schedule to the other in the manner provided by section two of the Pharmacy Act, 1868, for adding to the list of articles deemed to be poisons within the meaning of that Act.

2. *Regulation of sale of certain poisonous substances for agricultural and horticultural purposes.*—(1) So much of the Pharmacy Act, 1868, as makes it an offence for any person to sell or keep open shop for the sale of poisons, unless he is a duly registered pharmaceutical chemist or chemist and druggist and conforms to regulations made under section one of that Act, shall not apply in the case of poisonous substances to be used exclusively in agriculture or horticulture for the destruction of insects, fungi, or bacteria, or as sheep dips or weed killers which are poisonous by reason of their containing arsenic, tobacco, or the alkaloids of tobacco, if the person so selling or keeping open shop is duly licensed for the purpose under this section by a local authority, and conforms to any regulations as to the keeping, transporting, and selling of poisons made under this section, but nothing in this section shall exempt any person so licensed from the requirements of any other provision of the Pharmacy Act, 1868, or of the Arsenic Act, 1851 [14 & 15 Vict. c. 13], relating to poisons:

Provided that His Majesty may by Order in Council amend this provision by adding thereto or removing therefrom any poisonous substance, and, upon any such Order being made, this provision shall have effect as if the added poisonous substances were included therein and the removed poisonous substances were excluded therefrom.

(2) Before granting any licence under this section the local authority shall take into consideration whether in the neighbourhood where the applicant for the licence carries on or intends to carry on business the reasonable requirements of the public with respect to the purchase of such poisonous substances as aforesaid are satisfied.

(3) His Majesty may, by Order in Council, make regulations as to—

- the granting of licences under this section; and
- the duration, renewal, revocation, suspension, extent, and production of such licences; and
- the keeping, inspection, and copying of registers of licences; and
- the fees to be charged for licences and for inspection and copying of registers; and
- the keeping, transporting, and selling of the poisonous substances to which this section applies;

and generally for the purposes of carrying this section into effect.

(4) The local authority for the purposes of this section shall, as respects the area of any municipal borough in England having a population of more than ten thousand according to the last published census for the time being, be the council of that borough, and, as respects the area of any royal, parliamentary, or police burgh in Scotland, be the town council, and, as respects any other place, be the council of the county.

(5) An Order in Council under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

3. *Amendment of 31 & 32 Vict. c. 121, ss. 15 and 16.*—(1) Any person who, being a duly registered pharmaceutical chemist or chemist and

druggist, carries on the business of pharmaceutical chemist or chemist and druggist shall, unless in every premises where the business is carried on the business is bona fide conducted by himself or some other duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and unless the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises, be guilty of an offence under section fifteen of the Pharmacy Act, 1868.

(2) The provisions of section sixteen of the Pharmacy Act, 1868, which enable the executor, administrator, or trustee of the estate of a deceased pharmaceutical chemist or chemist and druggist to continue his business so long as such business is bona fide conducted by a duly qualified assistant, shall be construed as enabling such executor, administrator, or trustee to carry on the business if and so long only as, in every premises where the business is carried on, the business is bona fide conducted by a duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises.

(3) A registered chemist or druggist may, notwithstanding anything in section fifteen of the Pharmacy Act, 1868, take, use, or exhibit the name or title of pharmacist.

(4) A body corporate, and in Scotland a firm or partnership, may carry on the business of a pharmaceutical chemist or chemist and druggist—

- if the business of the body corporate, firm, or partnership, so far as it relates to the keeping, retailing, and dispensing of poisons, is under the control and management of a superintendent who is a duly registered pharmaceutical chemist or chemist and druggist, whose name has been forwarded to the registrar appointed under the Pharmacy Act, 1852, to be entered by him in a register to be kept for that purpose, and who does not act at the same time in a similar capacity for any other body corporate, firm, or partnership; and
- if in every premises where such business as aforesaid is carried on, and is not personally conducted by the superintendent, such business is bona fide conducted under the direction of the superintendent by a manager or assistant who is a duly registered pharmaceutical chemist or chemist and druggist, and whose certificate of qualification is conspicuously exhibited in the shop or other place in which he so conducts the business.

A body corporate, and in Scotland a firm or partnership, may use the description of chemist and druggist, or of chemist or of druggist, or of dispensing chemist or druggist, if the foregoing requirements as to the carrying on of the business are observed, and if the superintendent is a member of the board of directors or other governing body of the body corporate, or of the firm or partnership, as the case may be.

Subject as aforesaid, section twelve of the Pharmacy Act, 1852 [15 & 16 Vict. c. 56], and sections one and fifteen of the Pharmacy Act, 1868, shall apply to a body corporate, and in Scotland to a firm or partnership, in like manner as they apply to an individual.

4. *Extension of powers of Pharmaceutical Society to make bye-laws.*] The power of making bye-laws conferred by section two of the Pharmacy Act, 1852, on the council of the Pharmaceutical Society shall be deemed to include the power of making bye-laws for all or any of the following purposes (that is to say):—

- Requiring persons desirous of presenting themselves for examination by the said society to produce evidence satisfactory to the council of the society that they have received a sufficient preliminary practical training in the subjects of the examination;

- (b) Providing for the registration, upon payment of the prescribed fee, as pharmaceutical chemists or chemists and druggists under the Pharmacy Acts, 1852 and 1868, without examination, of any persons holding colonial diplomas or of qualified military dispensers or certified assistants to apothecaries under the Apothecaries Act, 1815 [55 Geo. 3, c. 194], who produce evidence satisfactory to the council of the society that they are persons of sufficient skill and knowledge to be so registered;

- (c) Providing for periods of time and courses of study in connection with the qualifying examination, and dividing such examination into two parts.

**5. Restrictions on sale of certain poisonous substances.]—**(1) It shall not be lawful to sell any substance to which this section applies by retail, unless the box, bottle, vessel, wrapper, or cover in which the substance is contained is distinctly labelled with the name of the substance and the word "Poisonous," and with the name and address of the seller of the substance, and unless such other regulations as may be prescribed under this section by Order in Council are complied with; and, if any person sells any such substance otherwise than in accordance with the provisions of this section or of any Order in Council made thereunder, he shall, on conviction under the Summary Jurisdiction Acts, be liable for each offence to a fine not exceeding five pounds.

(2) The substances to which this section applies are sulphuric acid, nitric acid, hydrochloric acid, soluble salts of oxalic acid, and such other substances as may for the time being be prescribed by Order in Council under this section.

**6. Application to Ireland.]—**(1) The provisions of section two and section five of this Act shall apply to Ireland, with the following modifications:—

- (a) For the reference to the Pharmacy Act, 1868, there shall be substituted a reference to the Pharmacy Act (Ireland), 1875 (38 & 39 Vict. c. 57), and the Pharmacy Act (Ireland) (1875) Amendment Act, 1890 (53 & 54 Vict. c. 48), and the reference to regulations made under section one of the first mentioned Act shall not apply;
- (b) For references to Orders in Council by His Majesty, or to Orders in Council there shall be substituted references to Orders in Council by the Lord Lieutenant;
- (c) The reference to a duly registered chemist and druggist shall include a reference to a registered druggist.

(2) Save as provided by this section, the foregoing provisions of this Act shall not apply to Ireland.

**7. Continuation of business on death of chemist and druggist or registered druggist in Ireland.]** Upon the death of any person registered under the Pharmacy Act (Ireland) (1875) Amendment Act, 1890, as a chemist and druggist or registered druggist and actually in business at the time of his death it shall be lawful for any executor, administrator, or trustee of his estate to continue such business if and so long only as such business is bona fide conducted by an assistant being a duly registered pharmaceutical chemist or licentiate apothecary, or duly registered chemist and druggist, or duly registered druggist.

**8. Short title, commencement, and extent.]** This Act may be cited as the Poisons and Pharmacy Act, 1908, and shall come into operation on the first day of April nineteen hundred and nine.

#### SCHEDULE.

##### Part I.

Arsenic, and its medicinal preparations.  
Aconite, aconitine, and their preparations.

Alkaloids—all poisonous vegetable alkaloids not specifically named in this schedule, and their salts, and all poisonous derivatives of vegetable alkaloids.

Atropine, and its salts, and their preparations.  
Belladonna, and all preparations or admixtures (except belladonna plaisters) containing 0.1 or more per cent. of belladonna alkaloids.

Cantharides, and its poisonous derivatives.  
Coca, any preparation or admixture of, containing 1 or more per cent. of coca alkaloids.

Corrosive sublimate.  
Cyanide of potassium, and all poisonous cyanides and their preparations.

Emetic tartar, and all preparations or admixtures containing 1 or more per cent. of emetic tartar.

Ergot of rye, and preparations of ergots.  
Nux vomica, and all preparations or admixtures containing 0.2 or more per cent. of strychnine.  
Opium, and all preparations or admixtures containing 1 or more per cent. of morphine.

Picrotoxin.  
Prussic acid, and all preparations or admixtures containing 0.1 or more per cent. of prussic acid.

Savin, and its oil, and all preparations or admixtures containing savin or its oil.

##### Part II.

Almonds, essential oil of (unless deprived of prussic acid).

Antimonial wine.  
Cantharides, tincture and all vesicating liquid preparations or admixtures of.

Carbolic acid, and liquid preparations of carbolic acid, and its homologues containing more than 3 per cent. of those substances, except preparations for use as sheep wash or for any other purpose in connection with agriculture or horticulture, contained in a closed vessel distinctly labelled with the word "Poisonous," the name and address of the seller, and a notice of the special purposes for which the preparations are intended.

Chloral hydrate.  
Chloroform, and all preparations or admixtures containing more than 20 per cent. of chloroform.

Coca, any preparation or admixture of, containing more than 0.1 per cent. but less than 1 per cent. of coca alkaloids.

Digitalis.  
Mercuric iodide.  
Mercuric sulphocyanide.  
Oxalic acid.

Poppies, all preparations of, excepting red poppy petals and syrup of red poppies (*papaver rhæas*).

Precipitate, red, and all oxides of mercury.

Precipitate, white.

Strophanthus.

Sulphonal.

All preparations or admixtures which are not included in Part I. of this schedule, and contain a poison within the meaning of the Pharmacy Acts, except preparations or admixtures the exclusion of which from this schedule is indicated by the words therein relating to carbolic acid, chloroform, and coca, and except such substances as come within the provisions of section five of this Act.

#### CHAPTER 56.

[Tuberculosis Prevention (Ireland) Act, 1908.]

An Act to prevent the spread and provide for the treatment of Tuberculosis; and for other purposes connected therewith.

[21st December 1908.]

#### CHAPTER 57.

[Coal Mines Regulation Act, 1908.]

An Act to amend the Coal Mines Regulation Acts, 1887 to 1905, for the purpose of limiting hours of work below ground.

[21st December 1908.]

Be it enacted, &c.:

**1. Limit of hours of work below ground in coal mines.]—**(1) Subject to the provisions of this Act a workman shall not be below ground in a mine

for the purpose of his work, and of going to and from his work, for more than eight hours during any consecutive twenty-four hours.

(2) No contravention of the foregoing provisions shall be deemed to take place in the case of a workman working in a shift if the period between the times at which the last workman in the shift leaves the surface and the first workman in the shift returns to the surface does not exceed eight hours; nor shall any contravention of the foregoing provisions be deemed to take place in the case of any workman who is below ground for the purpose of rendering assistance in the event of accident, or for meeting any danger or apprehended danger, or for dealing with any emergency or work uncompleted through unforeseen circumstances which requires to be dealt with without interruption in order to avoid serious interference with ordinary work in the mine or in any district of the mine, or, in the case of stallmen when engaged in the process of taking down top coal in square or wide work in the thick coal of the South Staffordshire district, so long as their presence in or near the stall is necessary to ensure safety.

(3) The owner, agent, or manager of every mine shall fix for each shift of workmen in the mine the time at which the lowering of the men to the mine is to commence and to be completed, and the time at which the raising of the men from the mine is to commence and to be completed, in such a manner that every workman shall have the opportunity of returning to the surface without contravention of the foregoing provisions of this section, and shall post and keep posted at the pit head a conspicuous notice of the times so fixed, and shall make all arrangements necessary for the observance of those times in lowering and raising the men.

(4) The interval between the times fixed for the commencement and for the completion of the lowering and raising of each shift of workmen to and from the mine shall be such time as may for the time being be approved by the inspector as the time reasonably required for the purpose. Provided that, in the event of any accident to the winding machinery, or other accident interfering with the lowering or raising of workmen, the interval may temporarily be extended to such extent as may be necessary; but in any such case the owner, agent, or manager of the mine shall on the same day send notice of the extension and the cause thereof to the inspector, and the extension shall not continue beyond such date as may be allowed by the inspector.

(5) In the event of the owner, agent, or manager feeling aggrieved by a decision of the inspector under the last foregoing sub-section, the matter shall, in accordance with regulations as to procedure and costs made by the Secretary of State, be referred to the decision of a person appointed by the judge of county courts for the district, or in Scotland by the sheriff of the county, in which the mine is situate, whose decision shall be final; but until such decision is given the times approved by the inspector shall be in force as respects the mine.

(6) A repairing shift of workmen may, notwithstanding the provisions of this section, for the purpose of avoiding work on Sunday, commence their period of work on Saturday before twenty-four hours have elapsed since the commencement of their last period of work, so long as at least eight hours have elapsed since the termination thereof.

(7) For the purposes of this Act, the expression "workman" means any person employed in a mine below ground, who is not an official of the mine (other than a fireman, examiner, or deputy), or a mechanic or horse-keeper, or a person engaged solely in surveying or measuring; and any number of workmen whose hours for beginning and terminating work in the mine are approximately the same shall be deemed to be a shift of workmen.

Provided that—

(a) In the case of a fireman, examiner, or deputy, onsetter, pump-minder, fanman, or furnace-man, the maximum period for which he may be below



ground under this Act shall be nine hours and a half; and

- (b) Where the work of sinking a pit or driving a cross-measure drift is being carried on continuously, no contravention of the provisions of this Act shall be deemed to take place as respects any workman engaged on that work if the number of hours spent by him at his working place does not exceed six at any one time, and the interval between the time of leaving the working place and returning thereto is in no case less than twelve hours.

If any question under this section arises (otherwise than in legal proceedings) whether any person is a workman or is a workman of any particular class, that question shall be referred to the Secretary of State, and his decision shall be final.

## 2. Register of times of descent and ascent.]—

(1) The owner, agent, or manager of every mine shall appoint one or more persons to direct at the pit head the lowering and raising of men to and from the mine, and shall cause a register to be kept in the form prescribed by the Secretary of State, and containing the particulars prescribed by him with respect to the times at which men are lowered into and raised from the mine, and the cases in which any man is below ground for more than the time fixed by this Act, and the cause thereof, and the register shall be open to inspection by the inspector.

(2) The workmen in a mine may, at their own cost, appoint and station one or more persons, whether holding the office of checkweigher or not, to be at the pit head, at all times when workmen are to be lowered or raised, for the purpose of observing the times of lowering and raising, and the provisions of the Coal Mines Regulation Acts, 1887 to 1905, relating to the checkweigher, and to the relations between the owner, agent, or manager of the mine and the checkweigher shall, so far as applicable, apply to any person so appointed as they apply to the checkweigher, with the substitution, as respects appointment, of the workmen in the mine for the persons who under those Acts are entitled to appoint a checkweigher.

(3) If any person knowingly makes a false entry in the register which is to be kept under this section, or knowingly causes or permits any such false entry to be made, he shall be liable on summary conviction in respect of each offence to a fine not exceeding five pounds. Provided that the total amount of fines for offences under this section committed by any one person at any one pit head in any one period of twenty-four hours shall not exceed twenty-five pounds.

3. Power to extend hours of work on a limited number of days in a year.]—(1) The time fixed by this Act as the time during which the workmen in a mine may be below ground for the purpose of their work and of going to and from their work may be extended as respects any mine by the owner, agent, or manager of the mine, on not more than sixty days in any calendar year by not more than one hour a day, and on any day on which an extension of time is made in accordance with this section as respects any mine the time as so extended shall be substituted for the purposes of this Act as respects that mine for the time as fixed by this Act.

(2) The owner, agent, or manager of every mine shall cause a register to be kept in such manner as the Secretary of State may direct of the cases in which any extension of time has been given under this section, and the register shall be open to inspection by the inspector.

4. Power to suspend Act by Order in Council in event of emergency.] His Majesty may, in the event of war or of imminent national danger or great emergency, or in the event of any grave economic disturbance due to the demand for coal exceeding the supply available at the time, by Order in Council suspend the operation of this Act to such extent and for such period as may be named in the Order, either as respects all coal mines or any class of coal mines.

5. Application to mines not entered by a shaft,

dec.] In the application of this Act to mines which are entered otherwise than by a shaft, and to workmen who are not lowered to or raised from the mine by means of machinery, the admission of men to the mine shall be substituted for the lowering of men to the mine, and the return of men from the mine shall be substituted for the raising of men from the mine, and such times as may be determined by the owner, agent, or manager of the mine, with the approval of the inspector, as the times properly corresponding to the times fixed for the commencement and completion of the lowering and raising of workmen to and from the mine, shall be substituted for the times so fixed.

6. Provisions for securing compliance with Act.] For securing compliance with the provisions of this Act, it shall be the duty of the owner, agent, or manager of every mine—

- (a) to make regulations for that purpose and publish such regulations by posting them and keeping them posted at the pithead, and by supplying a copy thereof gratis to every workman employed underground in the mine who, not having been previously supplied with a copy, applies therefor at the office at which he is paid; and
- (b) to provide necessary means for raising the men from the mine within the time limited by this Act.

7. Penalties.]—(1) If any person contravenes or fails to comply with any provision of this Act or connives at any such contravention or failure on the part of any other person, he shall be guilty of an offence against this Act:

Provided that a workman shall not be guilty of an offence under this Act in the case of any failure to return to the surface within the time limited by this Act if he proves that without default on his part he was prevented from returning to the surface owing to means not being available for the purpose.

(2) A person guilty of an offence under this Act for which a special penalty is not provided shall, in respect of each offence, be liable, on summary conviction, if he is the owner, agent, or manager of the mine, to a fine not exceeding two pounds, and in any other case to a fine not exceeding ten shillings.

(3) If a workman is below ground for a longer period during any consecutive twenty-four hours than the time fixed by this Act he shall be deemed to have been below ground in contravention of this Act unless the contrary is proved.

8. Application, commencement, and short title.]—(1) This Act shall, except where the contrary intention appears, apply to all mines to which the Coal Mines Regulation Acts, 1887 to 1905, apply.

(2) This Act shall come into operation, as respects mines in the counties of Northumberland and Durham, on the first day of January nineteen hundred and ten, and elsewhere on the first day of July nineteen hundred and nine.

(3) This Act may be cited as the Coal Mines Regulation Act, 1908, and shall be construed as one with the Coal Mines Regulation Acts, 1887 to 1905, and this Act and those Acts may be cited together as the Coal Mines Regulation Acts, 1887 to 1908.

## CHAPTER 58.

[Local Registration of Title (Ireland) Amendment Act, 1908.]

An Act to amend the Local Registration of Title (Ireland) Act, 1891.

[21st December 1908.]

## CHAPTER 59.

[Prevention of Crime Act, 1908.]

An Act to make better provision for the prevention of crime, and for that purpose to provide for the reformation of Young Offenders and the prolonged detention of Habitual Criminals, and for other purposes incidental thereto.

[21st December 1908.]

Be it enacted, &c. :

## PART I.

### REFORMATION OF YOUNG OFFENDERS.

1. Power of court to pass sentence of detention in Borstal Institution.]—(1) Where a person is convicted on indictment of an offence for which he is liable to be sentenced to penal servitude or imprisonment, and it appears to the court—

- (a) that the person is not less than sixteen nor more than twenty-one years of age; and
- (b) that, by reason of his criminal habits or tendencies, or association with persons of bad character, it is expedient that he should be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime;

it shall be lawful for the court, in lieu of passing a sentence of penal servitude or imprisonment, to pass a sentence of detention under penal discipline in a Borstal Institution for a term of not less than one year nor more than three years:

Provided that, before passing such a sentence, the court shall consider any report or representations which may be made to it by or on behalf of the Prison Commissioners as to the suitability of the case for treatment in a Borstal Institution, and shall be satisfied that the character, state of health, and mental condition of the offender, and the other circumstances of the case, are such that the offender is likely to profit by such instruction and discipline as aforesaid.

(2) The Secretary of State may by order direct that this section shall extend to persons apparently under such age not exceeding the age of twenty-three as may be specified in the order, and upon such an order being made this section shall, whilst the order is in force, have effect as if the specified age were substituted for "twenty-one":

Provided that such an order shall not be made until a draft thereof has lain before each House of Parliament for not less than thirty days during the session of Parliament, and if either House, before the expiration of that period, presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of any new draft order.

### 2. Application to reformatory school offences.]

Where a youthful offender sentenced to detention in a reformatory school is convicted under any Act before a court of summary jurisdiction of the offence of committing a breach of the rules of the school, or of inciting to such a breach, or of escaping from such a school, and the court might under that Act sentence the offender to imprisonment, the court may, in lieu of sentencing him to imprisonment, sentence him to detention in a Borstal Institution for a term not less than one year nor more than three years, and in such case the sentence shall supersede the sentence of detention in a reformatory school.

3. Power to transfer from prison to Borstal Institution.] The Secretary of State may, if satisfied that a person undergoing penal servitude or imprisoned in consequence of a sentence passed either before or after the passing of this Act, being within the limits of age within which persons may be detained in a Borstal Institution, might with advantage be detained in a Borstal Institution, authorise the Prison Commissioners to transfer him from prison to a Borstal Institution, there to serve the whole or any part of the unexpired residue of his sentence, and whilst detained in, or placed out on licence from, such an institution, this Part of this Act shall apply to him as if he had been originally sentenced to detention in a Borstal Institution.

### 4. Establishment of Borstal Institutions.]—(1)

For the purposes of this Part of this Act the Secretary of State may establish Borstal Institutions, that is to say, places in which young offenders whilst detained may be given such industrial training and other instruction, and be subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime, and for that purpose may,



with the approval of the Treasury, authorise the Prison Commissioners either to acquire any land or to erect or acquire any building or to appropriate the whole or any part of any land or building vested in them or under their control, and any expenses incurred under this section shall be paid out of moneys provided by Parliament.

(2) The Secretary of State may make regulations for the rule and management of any Borstal Institution, and the constitution of a visiting committee thereof, and for the classification, treatment, and employment and control of persons sent to it in pursuance of this Part of this Act, and for their temporary detention until arrangements can be made for sending them to the institution, and, subject to any adaptations, alterations, and exceptions made by such regulations, the Prison Acts, 1865 to 1898 (including the penal provisions thereof), and the rules thereunder, shall apply in the case of every such institution as if it were a prison.

5. *Power to release on licence.*—(1) Subject to regulations by the Secretary of State, the Prison Commissioners may at any time after the expiration of six months, or, in the case of a female, three months, from the commencement of the term of detention, if satisfied that there is a reasonable probability that the offender will abstain from crime and lead a useful and industrious life, by licence permit him to be discharged from the Borstal Institution on condition that he be placed under the supervision or authority of any society or person named in the licence who may be willing to take charge of the case.

(2) A licence under this section shall be in force until the term for which the offender was sentenced to detention has expired, unless sooner revoked or forfeited.

(3) Subject to regulations by the Secretary of State, a licence under this section may be revoked at any time by the Prison Commissioners, and where a licence has been revoked the person to whom the licence related shall return to the Borstal Institution, and, if he fails to do so, may be apprehended without warrant and taken to the institution.

(4) If a person absent from a Borstal Institution under such a licence escapes from the supervision of the society or person in whose charge he is placed, or commits any breach of the conditions contained in the licence, he shall be considered thereby to have forfeited the licence.

(5) A court of summary jurisdiction for the place where the Borstal Institution from which a person has been placed out on licence is situate or where such a person is found may, on information on oath that the licence has been forfeited under this section, issue a warrant for his apprehension, and he shall, on apprehension, be brought before a court of summary jurisdiction, which, if satisfied that the licence has been forfeited, may order him to be remitted to the Borstal Institution, and may commit him to any prison within the jurisdiction of the court until he can conveniently be removed to the institution.

(6) The time during which a person is absent from a Borstal Institution under such a licence shall be treated as part of the time of his detention in the institution: Provided that where that person has failed to return to the institution on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the institution.

(7) A licence under this section shall be in such form and shall contain such conditions as may be prescribed by regulations made by the Secretary of State.

6. *Supervision after expiration of term of sentence.*—(1) Every person sentenced to detention in a Borstal Institution shall, on the expiration of the term of his sentence, remain for a further period of six months under the supervision of the Prison Commissioners.

(2) The Prison Commissioners may grant to any person under their supervision a licence in accordance with the last foregoing section, and may revoke any such licence and recall the person to a Borstal Institution, and any person

so recalled may be detained in a Borstal Institution for a period not exceeding three months, and may at any time be again placed out on licence:

Provided that a person shall not be so recalled unless the Prison Commissioners are of opinion that the recall is necessary for his protection, and they shall again place him out on licence as soon as possible and at latest within three months after the recall, and that a person so recalled shall not in any case be detained after the expiration of the said period of six months' supervision.

(3) A licence granted to a person before the expiration of his sentence of detention in a Borstal Institution shall, on his becoming liable to be under supervision in accordance with this section, continue in force after the expiration of that term, and may be revoked in manner provided by the last foregoing section.

(4) The Secretary of State may at any time order that a person under supervision under this section shall cease to be under such supervision.

7. *Transfer of incorrigibles, &c., to prison.*—Where a person detained in a Borstal Institution is reported to the Secretary of State by the visiting committee of such institution to be incorrigible, or to be exercising a bad influence on the other inmates of the institution, the Secretary of State may commute the unexpired residue of the term of detention to such term of imprisonment, with or without hard labour, as the Secretary of State may determine, but in no case exceeding such unexpired residue.

8. *Treasury contributions towards expenses of societies assisting, &c., persons discharged from Borstal Institutions.*—Where a society has undertaken the duty of assisting or supervising persons discharged from a Borstal Institution, either absolutely or on licence, there may be paid to the society out of money provided by Parliament towards the expenses of the society incurred in connection with the persons so discharged such sums on such conditions as the Secretary of State, with the approval of the Treasury, may recommend.

9. *Removal from one part of the United Kingdom to another.*—Where a person has been sentenced to detention in a Borstal Institution in one part of the United Kingdom, the Secretary of State, the Secretary for Scotland or the Lord Lieutenant of Ireland, as the case may be, may, as authority under this Act for that part of the United Kingdom, direct that person to be removed to and detained in a Borstal Institution in another part of the United Kingdom, with the consent of the authority under this Act for that other part.

## PART II.

### DETENTION OF HABITUAL CRIMINALS.

10. *Power of court to pass sentence of preventive detention in addition to penal servitude.*—

(1) Where a person is convicted on indictment of a crime, committed after the passing of this Act, and subsequently the offender admits that he is or is found by the jury to be a habitual criminal, and the court passes a sentence of penal servitude, the court, if of opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that the offender should be kept in detention for a lengthened period of years, may pass a further sentence ordering that on the determination of the sentence of penal servitude he be detained for such period not exceeding ten nor less than five years, as the court may determine, and such detention is hereinafter referred to as preventive detention, and a person on whom such a sentence is passed shall, whilst undergoing both the sentence of penal servitude and the sentence of preventive detention, be deemed for the purposes of the Forfeiture Act, 1870 [33 & 34 Vict. c. 23], and for all other purposes, to be a person convicted of felony.

(2) A person shall not be found to be a habitual criminal unless the jury finds on evidence—

(a) that since attaining the age of sixteen years he has at least three times previously to the conviction of the crime charged in the said indictment been

convicted of a crime, whether any such previous conviction was before or after the passing of this Act, and that he is leading persistently a dishonest or criminal life; or

(b) that he has on such a previous conviction been found to be a habitual criminal and sentenced to preventive detention.

(3) In any indictment under this section it shall be sufficient, after charging the crime, to state that the offender is a habitual criminal.

(4) In the proceedings on the indictment the offender shall in the first instance be arraigned on so much only of the indictment as charges the crime, and if on arraignment he pleads guilty or is found guilty by the jury, the jury shall, unless he pleads guilty to being a habitual criminal, be charged to inquire whether he is a habitual criminal, and in that case it shall not be necessary to swear the jury again:

Provided that a charge of being a habitual criminal shall not be inserted in an indictment—

(a) without the consent of the Director of Public Prosecutions; and

(b) Unless not less than seven days' notice has been given to the proper officer of the court by which the offender is to be tried, and to the offender, that it is intended to insert such a charge; and the notice to the offender shall specify the previous convictions and the other grounds upon which it is intended to found the charge.

(5) Without prejudice to any right of the accused to tender evidence as to his character and repute, evidence of character and repute may, if the court thinks fit, be admitted as evidence on the question whether the accused is or is not leading persistently a dishonest or criminal life.

(6) For the purposes of this section the expression "crime" has the same meaning as in the Prevention of Crimes Act, 1871 [34 & 35 Vict. c. 112], and the definition of "crime" in that Act, set out in the schedule to this Act, shall apply accordingly.

11. *Appeal against sentence to Court of Criminal Appeal.*—A person sentenced to preventive detention may, notwithstanding anything in the Criminal Appeal Act, 1907 [7 Edw. 7 c. 23], appeal against the sentence without the leave of the Court of Criminal Appeal.

12. *Power in certain cases to commute penal servitude to preventive detention.*—Where a person has been sentenced, whether before or after the passing of this Act, to penal servitude for a term of five years or upwards, and he appears to the Secretary of State to have been a habitual criminal within the meaning of this Act, the Secretary of State may, if he thinks fit, at any time after three years of the term of penal servitude have expired, commute the whole or any part of the residue of the sentence to a sentence of preventive detention, so, however, that the total term of the sentence when so commuted shall not exceed the term of penal servitude originally awarded.

13. *Detention in prison of persons undergoing preventive detention.*—(1) The sentence of preventive detention shall take effect immediately on the determination of the sentence of penal servitude, whether that sentence is determined by effluxion of time or by order of the Secretary of State at such earlier date as the Secretary of State, having regard to the circumstances of the case and in particular to the time at which the convict, if sentenced to penal servitude alone, would ordinarily have been licensed to be at large, may direct.

(2) Persons undergoing preventive detention shall be confined in any prison or part of a prison which the Secretary of State may set apart for the purpose, and shall (save as otherwise provided by this Act) be subject to the law for the time being in force with respect to penal servitude as if they were undergoing penal servitude:

Provided that the rules applicable to convicts and convict prisons shall apply to persons undergoing preventive detention, and to the prisons or parts of prisons in which they are detained,

subject to such modifications in the direction of a less rigorous treatment as the Secretary of State may prescribe by prison rules within the meaning of the Prison Act, 1898 [61 & 62 Vict. c. 41].

(3) Persons undergoing preventive detention shall be subjected to such disciplinary and reformatory influences, and shall be employed on such work as may be best fitted to make them able and willing to earn an honest livelihood on discharge.

(4) The Secretary of State shall appoint for every such prison or part of a prison so set apart a board of visitors, of whom not less than two shall be justices of the peace, with such powers and duties as he may prescribe by such prison rules as aforesaid.

**14. Power to discharge on licence.**—(1) The Secretary of State shall, once at least in every three years during which a person is detained in custody under a sentence of preventive detention, take into consideration the condition, history, and circumstances of that person with a view of determining whether he shall be placed out on licence, and, if so, on what conditions.

(2) The Secretary of State may at any time discharge on licence a person undergoing preventive detention if satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life or that he is no longer capable of engaging in crime, or that for any other reason it is desirable to release him from confinement in prison.

(3) A person so discharged on licence may be discharged on probation, and on condition that he be placed under the supervision or authority of any society or person named in the licence who may be willing to take charge of the case, or on such other conditions as may be specified in the licence.

(4) The Directors of Convict Prisons shall report periodically to the Secretary of State on the conduct and industry of persons undergoing preventive detention, and their prospects and probable behaviour on release, and for this purpose shall be assisted by a committee at each prison in which such persons are detained, consisting of such members of the board of visitors and such other persons of either sex as the Secretary of State may from time to time appoint.

(5) Every such committee shall hold meetings, at such intervals of not more than six months as may be prescribed, for the purpose of personally interviewing persons undergoing preventive detention in the prison and preparing reports embodying such information respecting them as may be necessary for the assistance of the Directors, and may at any other times hold such other meetings, and make such special reports respecting particular cases, as they may think necessary.

(6) A licence under this section may be in such form and may contain such conditions as may be prescribed by the Secretary of State.

(7) The provisions relating to licences to be at large granted to persons undergoing penal servitude shall not apply to persons undergoing preventive detention.

**15. Provisions as to persons placed out on licence.**—(1) The society or person under whose supervision or authority a person is so placed shall periodically, in accordance with regulations made by the Secretary of State, report to the Secretary of State on the conduct and circumstances of that person.

(2) A licence under this Part of this Act may be revoked at any time by the Secretary of State, and where a licence has been revoked, the person to whom the licence related shall return to the prison, and, if he fails to do so, may be apprehended without warrant and taken to prison.

(3) If a person absent from prison under such a licence escapes from the supervision of the society or person in whose charge he is placed, or commits any breach of the conditions contained in the licence, he shall be considered thereby to have forfeited the licence, and shall be taken back to prison.

(4) A court of summary jurisdiction for the place where the prison from which a person has

been discharged on licence is situate, or where such a person is found, may, on information on oath that the licence has been forfeited under this section, issue a warrant for his apprehension, and he shall on apprehension, be brought before a court of summary jurisdiction, which, if satisfied that the licence has been forfeited, shall order him to be remitted to preventive detention, and may commit him to any prison within the jurisdiction of the court until he can conveniently be removed to a prison or part of a prison set apart for the purpose of the confinement of persons undergoing preventive detention.

(5) The time during which a person is absent from prison under such a licence shall be treated as part of the term of preventive detention:

Provided that, where such person has failed to return on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the unexpired residue of the term of preventive detention.

**16. Power to discharge absolutely.** Without prejudice to any other powers of discharge, the Secretary of State may at any time discharge absolutely any person discharged conditionally on licence under this Part of this Act, and shall so discharge him at the expiration of five years from the time when he was first discharged on licence if satisfied that he has been observing the conditions of his licence and abstaining from crime.

### PART III.

#### GENERAL.

**17. Application to Scotland.**—(1) Part I. of this Act shall apply to Scotland (with the substitution of an institution under any name prescribed by the Secretary for Scotland for a Borstal Institution) on and after such date as may be determined by the Secretary for Scotland by order issued under his hand and seal and published in the Edinburgh Gazette, which order shall indicate the date on and after which such an institution will be established in Scotland.

(2) In the application to Scotland of the provisions of this Act, other than those relating to the removal of persons from one part of the United Kingdom to another, "Secretary for Scotland" shall be substituted for "Secretary of State," "Prison Commissioners for Scotland" for "Prison Commissioners" and "Directors of Convict Prisons," "the Prisons (Scotland) Acts, 1860 to 1904" for "The Prisons Acts, 1865 to 1898," "the Prisons (Scotland) Act, 1877" [40 & 41 Vict. c. 53], for "The Prison Act, 1898," and "the sheriff" for "a court of summary jurisdiction," and the expression "crime," used in reference to previous convictions, means a crime of which a person has been convicted on indictment.

(3) Sub-section (4) of section ten shall not apply to Scotland, and in lieu thereof the following sub-section shall be substituted:—

"In the proceedings under an indictment in pursuance of this section, where at the first diet the accused has pleaded not guilty, at the second diet, unless the accused then pleads guilty, the jury shall in the first instance be sworn, and the accused shall then be tried on so much only of the indictment as charges the said crime, and, if he is found guilty, the same jury shall, unless the accused admits that he is a habitual criminal, be re-sworn to inquire whether he is a habitual criminal. Where at the first diet the accused pleads guilty of the crime, but denies that he is a habitual criminal, the plea shall be recorded and at the second diet, unless the accused admits that he is a habitual criminal, the jury shall be sworn to inquire whether he is a habitual criminal."

Provided that where a person is indicted under this section the provisions of section thirty-one of the Criminal Procedure (Scotland) Act, 1887 [50 & 51 Vict. c. 35], shall not apply unless the accused intimates his intention to plead guilty of the crime in terms of that section and to admit that he is a habitual criminal, and where the accused intimates his intention as aforesaid

the sheriff shall remit him to the High Court of Justiciary for sentence.

(4) Sub-section (6) of section ten shall not apply to Scotland.

(5) Section eleven shall not apply to Scotland and in lieu thereof the following provision shall be substituted:—

"A person sentenced in Scotland to preventive detention may appeal against the sentence to a Court of Appeal which shall consist of not less than three judges of the High Court of Justiciary, and the High Court shall have power from time to time to pass Acts of Adjournment regulating the procedure in such appeals. Every such Act of Adjournment shall, as soon as may be, be laid before both Houses of Parliament."

**18. Application to Ireland.** In the application to Ireland of the provisions of this Act, the following modifications shall be made:—

(a) References to the Lord Lieutenant shall be substituted for references to the Secretary of State, except in the provision relating to the removal of persons from one part of the United Kingdom to another; and in the provisions relating to regulations under Part I. and to prison rules under Part II. of this Act;

(b) The regulations to be made under Part I. of the prison rules to be made under Part II. of this Act shall be made by the General Prisons Board for Ireland subject to the approval of the Lord Lieutenant and Privy Council, and the provisions of section fifty-seven of the General Prisons (Ireland) Act, 1877 [40 & 41 Vict. c. 49], shall apply to the said rules;

(c) References to the General Prisons Board for Ireland shall be substituted for references to the Prison Commissioners and Directors of Convict Prisons;

(d) References to the Prisons (Ireland) Acts, 1826 to 1907, shall be substituted for references to the Prisons Acts, 1865 to 1898;

(e) A reference to the Attorney-General for Ireland shall be substituted for the reference to the Director of Public Prosecutions;

(f) The provision relating to appeals to the Court of Criminal Appeal shall not apply, but where any person charged in an indictment with being a habitual criminal is found by a jury under this Act to be a habitual criminal, the provisions of the Crown Cases Act, 1848 [11 & 12 Vict. c. 78], as amended by any subsequent enactment, shall, with the necessary modifications, apply in like manner as if the proceedings upon such charge were a trial for an offence to which section one of that Act applies and as if the person had been convicted of such an offence.

**19. Short title and commencement.**—(1) This Act may be cited as the Prevention of Crime Act, 1908.

(2) This Act shall come into operation on the first day of August one thousand nine hundred and nine.

### SCHEDULE.

The expression "crime" means, in England and Ireland, any felony or the offence of uttering false or counterfeit coin, or of possessing counterfeit gold or silver coin, or the offence of obtaining goods or money by false pretences, or the offence of conspiracy to defraud, or any misdemeanour under the fifty-eighth section of the Larceny Act, 1861.

### CHAPTER 60.

[Constabulary (Ireland) Act, 1908.]

An Act to amend the Law relating to the Pay and Pensions of the Royal Irish Constabulary, and for other purposes connected therewith.

[21st December 1908.]



**CHAPTER 61.***[Housing of the Working Classes (Ireland) Act, 1908.]*

An Act to provide further facilities for the erection of Houses for the Working Classes in Cities and Towns in Ireland.

[21st December 1908.]

**CHAPTER 62.***[Local Government (Scotland) Act, 1908.]*

An Act to amend the Law relating to County Government, and to Roads and Bridges and the use of Locomotives thereon, in Scotland.

[21st December 1908.]

**CHAPTER 63.***[Education (Scotland) Act, 1908.]*

An Act to amend the Laws relating to Education in Scotland, and for other purposes connected therewith.

[21st December 1908.]

**CHAPTER 64.***[Agricultural Holdings (Scotland) Act, 1908.]*

An Act to consolidate the Enactments relating to Agricultural Holdings in Scotland.

[21st December 1908.]

**CHAPTER 65.***[Summary Jurisdiction (Scotland) Act, 1908.]*

An Act to regulate and amend the Law relating to Summary Jurisdiction and Criminal Procedure in Scotland.

[21st December 1908.]

**CHAPTER 66.***[Public Meeting Act, 1908.]*

An Act to prevent disturbance of Public Meetings.

[21st December 1908.]

Be it enacted, &c. :

1. *Penalty on endeavour to break up public meeting.*—(1) Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a member of Parliament for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 [46 & 47 Vict. c. 51], and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

(2) Any person who incites others to commit an offence under this section shall be guilty of a like offence.

2. *Short title.*—This Act may be cited as the Public Meeting Act, 1908.

**CHAPTER 67.***[Children Act, 1908.]*

An Act to consolidate and amend the Law relating to the Protection of Children and Young Persons, Reformatory and Industrial Schools, and Juvenile Offenders, and otherwise to amend the Law with respect to Children and Young Persons.

[21st December 1908.]

Be it enacted, &c. :

**PART I.****INFANT LIFE PROTECTION.**

1. *Notices to be given by persons receiving infants for reward.*—(1) Where a person undertakes for reward the nursing and maintenance of one or more infants under the age of seven years apart from their parents or having no parents, he shall, within forty-eight hours from the recep-

tion of any such infant, give notice in writing thereof to the local authority :

Provided that this section shall not apply, as respects any infant, where the period for which it is received is forty-eight hours or less.

(2) Where a person undertakes for reward the nursing and maintenance of an infant already in his care without reward, the entering into the undertaking shall, for the purposes of this Part of this Act, be treated as a reception of the infant.

(3) The notice shall state the name, sex, and date and place of birth of the infant, the name of the person receiving the infant, and the dwelling within which the infant is being kept, and the name and address of the person from whom the infant has been received.

(4) If a person who has undertaken the nursing and maintenance of any such infant changes his residence, he shall within forty-eight hours thereof give to the local authority notice in writing of the change, and, where the residence to which he moves is situate in the district of another local authority, he shall give to that local authority the like notice as respects each infant in his care as he is by this section required to give on the first reception of the infant.

(5) If any such infant dies or is removed from the care of the person who has undertaken its nursing and maintenance, that person shall, within forty-eight hours thereof, give to the local authority notice in writing of the death or removal, and in the latter case also of the name and address of the person to whose care the infant has been transferred.

(6) Where at the commencement of this Act any infant is under the care of any person who has, before the commencement of this Act, undertaken its nursing and maintenance under such circumstances that if its nursing and maintenance had been undertaken after the commencement of this Act he would have been required to give notice to the local authority under this section, he shall, within one month after the commencement of this Act, give to the local authority the like notice as if the nursing and maintenance of the infant had been undertaken after the commencement of this Act :

Provided that nothing in this sub-section—

(a) shall apply to any person who on the reception of an infant gave such notice as was required by the Infant Life Protection Act, 1897, 60 and 61 Vict., c. 57; or

(b) shall exempt any person who ought to have given notice under that Act from any liability which he may have incurred thereunder.

Subject as aforesaid, this Part of this Act shall apply to an infant whose nursing and maintenance has been undertaken for reward before the passing of this Act in like manner as it applies to an infant whose nursing and maintenance has been so undertaken after the commencement of this Act, and as if any notice given under the Infant Life Protection Act, 1897, had been a notice given under this Part of this Act.

(7) If any person required to give a notice under this section fails to give the notice within the time specified for giving the notice, he shall be guilty of an offence under this Part of this Act, and, if the infant in respect of which notice ought to have been given was an infant the consideration for whose nursing and maintenance consisted in whole or in part of a lump sum, the person failing to give the notice shall, in addition to any other penalty under this Part of this Act, be liable to forfeit that sum or such less sum as the court having cognisance of the case may deem just, and the sum forfeited shall be applied for the benefit of the infant in such manner as the court may direct, and where any such sum is ordered to be forfeited the order may be enforced as if it were an order of the court made on complaint.

**2. Appointment and powers of inspectors, &c.]**

—(1) It shall be the duty of every local authority to provide for the execution of this Part of this Act within their district, and for that purpose they shall from time to time make inquiry whether there are any persons residing therein who under-

take the nursing and maintenance of infants in respect of whom notice is required to be given under the foregoing section.

(2) If in the district of any local authority any persons are found who undertake the nursing and maintenance of such infants as aforesaid, the local authority shall appoint one or more persons of either sex to be infant protection visitors, whose duty it shall be from time to time to visit any infants referred to in any notice given under this Part of this Act, and the premises in which they are kept, in order to satisfy themselves as to the proper nursing and maintenance of the infants or to give any necessary advice or directions as to their nursing and maintenance :

Provided that the local authority may, either in addition to or in lieu of appointing infant protection visitors, authorise in writing one or more suitable persons of either sex to exercise the powers of infant protection visitors under this Part of this Act, subject to such terms and conditions as may be stated in the authorisation, and, where any infants have been placed out to nurse in the district of the authority by any philanthropic society, may, if satisfied that the interests of the infants are properly safeguarded, so authorise the society to exercise those powers as respects those infants, subject, however, to the obligation to furnish periodical reports to the local authority.

(3) A local authority may combine with any other local authority for the purpose of executing the provisions of this Part of this Act, and for defraying the expenses thereof.

(4) A local authority may exempt from being visited, either unconditionally or subject to such conditions as they think fit, any particular premises within their district which appear to them to be so conducted that it is unnecessary that they should be visited.

(5) If any person undertaking the nursing and maintenance of any such infants refuses to allow any such visitor or other person to visit or examine the infants or the premises in which they are kept, he shall be guilty of an offence under this Part of this Act.

(6) If any such visitor or other person is refused admittance to any premises in contravention of this Part of this Act, or has reason to believe that any infants under the age of seven years are being kept in any house or premises in contravention of this Part of this Act, he may apply to a justice, who, on being satisfied, on information in writing on oath, that there is reasonable ground for believing that an offence under this Part of this Act has been committed, may grant a warrant authorising the visitor or other person to enter the premises for the purpose of ascertaining whether any offence under this Part of this Act has been committed, and, if the occupier of the premises or any other person obstructs or causes or procures to be obstructed any visitor or other person acting in pursuance of such a warrant, he shall be guilty of an offence under this Part of this Act.

3. *Persons prohibited from receiving children for reward.*—An infant, in respect of which notice is required to be given under this Part of this Act, shall not, without the written sanction of the local authority, be kept—

(a) by any person from whose care any infant has been removed under this Part of this Act or the Infant Life Protection Act, 1897; or

(b) in any premises from which any infant has been removed under this Part of this Act by reason of the premises being dangerous or insanitary, or has been removed under the Infant Life Protection Act, 1897, by reason of the premises being so unfit as to endanger its health; or

(c) by any person who has been convicted of any offence under Part II. of this Act or under the Prevention of Cruelty to Children Act, 1904 [4 Edw. 7. c. 15.] ;

and any person keeping or causing to be kept an infant contrary to this section shall be guilty of an offence under this Part of this Act.



4. *Local authority to fix number of infants which may be retained.*—The local authority may fix the number of infants under the age of seven years which may be kept in any dwelling in respect of which a notice has been received under this Part of this Act, and any person keeping any infant in excess of the number so fixed shall be guilty of an offence under this Part of this Act.

5. *Removal of infant improperly kept.*—(1) If any infant, in respect of which notice is required to be given under this Part of this Act is kept,—

- (a) in any premises which are overcrowded, dangerous or insanitary; or
- (b) by any person who, by reason of negligence, ignorance, inebriety, immorality, criminal conduct, or other similar cause, is unfit to have care of it; or
- (c) by any person or in any premises in contravention of any of the provisions of this Part of this Act,

any visitor or other person appointed or authorised to execute the provisions of this Part of this Act may apply either to a justice or to the local authority for an order directing him to remove the infant to a place of safety until it can be restored to its relatives or be otherwise lawfully disposed of.

(2) Any person refusing to comply with such an order upon its being produced and read over to him, or obstructing or causing or procuring to be obstructed the visitor or such other person in the execution thereof, shall be guilty of an offence under this Part of this Act, and

- (a) if the order was made by a justice, the order may be enforced by the visitor or by any constable; and
- (b) if the order was made by the local authority the visitor or other person may apply to any justice for an order directing the removal of the infant, which order may be enforced by the visitor or by any constable.

6. *Notice to coroner.*—(1) In the case of the death of any infant respecting which notice is required to be given under this Part of this Act, the person who had the care of the infant shall, within twenty-four hours of the death, give notice in writing thereof to the coroner of the district within which the body of the infant lies, and the coroner shall hold an inquest thereon, unless a certificate under the hand of a duly qualified medical practitioner is produced to him, certifying that he has personally attended the infant during its last illness, and specifying the cause of death, and the coroner is satisfied that there is no ground for holding an inquest.

(2) If any person required to give a notice under this section fails to give the notice within the time specified for giving the notice, he shall be guilty of an offence under this Part of this Act.

7. *Avoidance of policies of life insurance of infants kept for reward.*—A person by whom an infant in respect of which notice is required to be given under this Part of this Act is kept shall be deemed to have no interest in the life of the child for the purposes of the Life Assurance Act, 1774 [14 Geo. 3. c. 48], and, if any such person directly or indirectly insures or attempts to insure the life of such an infant, he shall be guilty of an offence under this Part of this Act, and, if a company, within the meaning of the Life Assurance Companies Acts, 1870 to 1872, or any other company, society, or person, knowingly issues, or procures or attempts to procure to be issued, or for the benefit of such a person as aforesaid or to any person on his behalf, a policy on the life of such an infant, the company, society, or person shall be guilty of an offence under this Part of this Act.

8. *Provisions as to notices.*—(1) If any person requires to give a notice under this Part of this Act knowingly or wilfully makes, or causes or procures any other person to make, any false or misleading statement in any such notice, he shall be guilty of an offence under this Part of this Act.

(2) Every notice by this Part of this Act required to be given may be sent by post in a

registered letter addressed to the clerk of the local authority or to such other person as the local authority may appoint, or in the case of a notice to a coroner to the coroner, or may be delivered at the office of the local authority, or, in the case of a notice to a coroner, at his office or residence.

9. *Prosecution of offences and application of fines.*—(1) Every person guilty of an offence under this Part of this Act shall on summary conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding twenty-five pounds, and the court may order any infant in respect of which the offence was committed to be removed to a place of safety.

(2) Any fines under this Part of this Act shall, notwithstanding any provision in any other Act, be paid to the local authority, and be applied to the purposes to which the fund or rate out of which the expenses of the local authority are to be defrayed is applicable.

10. *Local authorities and expenses.*—(1) The local authority for the purposes of this Part of this Act shall,—

- (a) as respects the county of London, exclusive of the City, be the county council;
- (b) as respects the City of London, be the Common Council;
- (c) elsewhere be the guardians of the poor law union.

(2) All expenses incurred by or on behalf of the local authority in and about the execution of this Part of this Act shall be defrayed—

- (a) in the case of the county of London, out of the county fund as general county expenses;
- (b) in the case of the City of London, out of the general rate;
- (c) in the case of a board of guardians, out of the common fund.

11. *Exemptions.*—(1) The provisions of this Part of this Act shall not extend to any relative or legal guardian of an infant who undertakes the nursing and maintenance of the infant or to any person who undertakes the nursing or maintenance of an infant under the provisions of any Act for the relief of the poor or of any order made under any such Act; or to hospitals, convalescent homes, or institutions established for the protection and care of infants, and conducted in good faith for religious or charitable purposes, or boarding schools at which efficient elementary education is provided.

(2) For the purposes of this section the expression "relatives" means grandparents, brothers, sisters, uncles, and aunts, by consanguinity or affinity, and in the case of illegitimate infants the persons who would be so related if the infant were legitimate.

## PART II.

### PREVENTION OF CRUELTY TO CHILDREN AND YOUNG PERSONS.

#### *Cruelty to Children and Young Persons.*

12. *Punishment for cruelty to children and young persons.*—(1) If any person over the age of sixteen years, who has the custody, charge, or care of any child or young person, wilfully assaults, ill-treats, neglects, abandons, or exposes such child or young person, or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanour, and shall be liable—

- (a) on conviction on indictment, to a fine not exceeding one hundred pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding two years; and
- (b) on summary conviction, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment, of

such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding six months;

and for the purposes of this section a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing, medical aid, or lodging for the child or young person, or if, being unable otherwise to provide such food, clothing, medical aid, or lodging, he fails to take steps to procure the same to be provided under the Acts relating to the relief of the poor.

(2) A person may be convicted of an offence under this section, either on indictment or by a court of summary jurisdiction, notwithstanding that actual suffering or injury to health, or the likelihood of such suffering or injury to health, was obviated by the action of another person.

(3) A person may be convicted of an offence under this section, either on indictment or by a court of summary jurisdiction, notwithstanding the death of the child or young person in respect of whom the offence is committed.

(4) Upon the trial of any person over the age of sixteen indicted for the manslaughter of a child or young person of whom he had the custody, charge, or care, it shall be lawful for the jury, if they are satisfied that the accused is guilty of an offence under this section in respect of such child or young person, to find the accused guilty of such offence.

(5) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruable or payable in the event of the death of the child or young person, and had knowledge that such sum of money was accruing or becoming payable, then—

- (a) in the case of a conviction on indictment, the court may in its discretion either increase the amount of the fine under this section so that the fine does not exceed two hundred pounds; or, in lieu of awarding any other penalty under this section, sentence the person to penal servitude for any term not exceeding five years; and
- (b) in the case of a summary conviction, the court in determining the sentence to be awarded shall take into consideration the fact that the person was so interested and had such knowledge.

(6) A person shall be deemed to be directly or indirectly interested in a sum of money under this section, if he has any share in or any benefit from the payment of that money, though he is not a person to whom it is legally payable.

(7) A copy of a policy of insurance, certified by an officer or agent of the insurance company granting the policy, to be a true copy, shall in any proceedings under this section be prima facie evidence that the child or young person therein stated to be insured has been in fact so insured, and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(8) An offence under this section is in this Part of this Act referred to as an offence of cruelty.

13. *Suffocation of infants.*—Where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air-passages of the infant) whilst the infant was in bed with some other person over sixteen years of age, and that that other person was at the time of going to bed under the influence of drink, that other person shall be deemed to have neglected the infant in a manner likely to cause injury to its health within the meaning of this Part of this Act.

#### *Other Offences in relation to Children and Young Persons.*

14. *Begging.*—(1) If any person causes or procures any child or young person, or, having the custody, charge or care of a child or young

person, allows that child or young person to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise, that person shall, on summary conviction, be liable to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months.

(2) If a person having the custody, charge or care of a child or young person is charged with an offence under this section, and it is proved that the child or young person was in any street, premises, or place for any such purpose as aforesaid, and that the person charged allowed the child or young person to be in the street, premises, or place, he shall be presumed to have allowed him to be in the street, premises, or place for that purpose unless the contrary is proved.

**15. Exposing children to risk of burning.**—If any person over the age of sixteen years who has the custody, charge or care of any child under the age of seven years allows that child to be in any room containing an open fire grate not sufficiently protected to guard against the risk of the child being burnt or scalded, without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury, he shall on summary conviction be liable to a fine not exceeding ten pounds:

Provided that this section shall not, nor shall any proceedings taken thereunder, affect any liability of any such person to be proceeded against by indictment for any indictable offence.

**16. Allowing children or young persons to be in brothels.**—(1) If any person having the custody, charge or care of a child or young person between the ages of four and sixteen allows that child or young person to reside in or to frequent a brothel, he shall be guilty of a misdemeanour and shall be liable on conviction on indictment or on summary conviction to a fine not exceeding twenty-five pounds, or alternatively or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding six months.

(2) Nothing in this section shall affect the liability of a person to be indicted under section six of the Criminal Law Amendment Act, 1885 [48 & 49 Vict. c. 69], but upon the trial of a person under that section it shall be lawful for the jury, if they are satisfied that the accused is guilty of an offence under this section, to find the accused guilty of such offence.

**17. Punishment of person causing, encouraging, or favouring seduction or prostitution of young girl.**—(1) If any person having the custody, charge or care of a girl under the age of sixteen years causes or encourages the seduction or prostitution of that girl, he shall be guilty of a misdemeanour and shall be liable to imprisonment, with or without hard labour, for any term not exceeding two years.

(2) For the purposes of this section a person shall be deemed to have caused or encouraged the seduction or prostitution (as the case may be) of a girl who has been seduced or become a prostitute if he has knowingly allowed the girl to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

**18. Power to bind over person having custody of young girl to exercise proper care.**—(1) Where it is shown to the satisfaction of a court of summary jurisdiction, on the complaint of any person, that a girl under the age of sixteen years is, with the knowledge of her parent or guardian, exposed to the risk of seduction or prostitution, or living a life of prostitution, the court may adjudge her parent or guardian to enter into a recognisance to exercise due care and supervision in respect of the girl.

(2) The provisions of the Summary Jurisdiction Act, 1879 [42 & 43 Vict. c. 49], with respect to recognisances to be of good behaviour (including

the provisions as to the enforcement thereof) shall apply to recognisances under this section.

#### *Arrest of Offender and Provision for Safety of Children.*

**19. Power to take offenders into custody.**—(1) Any constable may take into custody, without warrant, any person—

(a) who within view of the constable commits an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, where the name and residence of such person are unknown to the constable and cannot be ascertained by the constable; or

(b) who has committed, or who the constable has reason to believe has committed, an offence of cruelty or any of the offences mentioned in the First Schedule to this Act, if he has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable.

(2) Where a constable arrests any person without warrant in pursuance of this section, the superintendent or inspector of police or an officer of police of equal or superior rank, or the officer in charge of the police station to which such person is brought, shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child or young person against whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognisance, with or without sureties, as may in the judgment of the officer of police be required to secure the attendance of such person upon the hearing of the charge.

**20. Detention of child or young person in place of safety.**—(1) A constable, or any person authorised by a justice, may take to a place of safety any child or young person in respect of whom an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, has been, or there is reason to believe has been, committed.

(2) A child or young person so taken to a place of safety, and also any child or young person who seeks refuge in a place of safety, may there be detained until he can be brought before a court of summary jurisdiction, and that court may make such order as is mentioned in the next following sub-section, or may cause the child or young person to be dealt with as circumstances may admit and require, until the charge made against any person in respect of any offence as aforesaid with regard to the child or young person has been determined by the conviction or discharge of such person.

(3) Where it appears to a court of summary jurisdiction or any justice that an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, has been committed in respect of any child or young person who is brought before the court or justice, and that it is expedient in the interests of the child or young person that an order should be made under this sub-section, the court or justice may, without prejudice to any other power under this Act, make such order as circumstances require for the care and detention of the child or young person until a reasonable time has elapsed for a charge to be made against some person for having committed the offence, and, if a charge is made against any person within that time, until the charge has been determined by the conviction or discharge of that person, and in case of conviction for such further time not exceeding twenty-one days as the court which convicted may direct, and any such order may be carried out notwithstanding that any person claims the custody of the child or young person.

**21. Disposal of child or young person by order of court.**—(1) Where a person having the custody, charge or care of a child or young person has been—

(a) convicted of committing in respect of such child or young person an offence under this Part of this Act or any of the offences mentioned in the First Schedule to this Act; or

(b) committed for trial for any such offence; or

(c) bound over to keep the peace towards such child or young person,

by any court, that court, either at the time when the person is so convicted, committed for trial, or bound over, and without requiring any new proceedings to be instituted for the purpose, or at any other time, and also any petty sessional court before which any person may bring the case, may, if satisfied on inquiry that it is expedient so to deal with the child or young person, order that the child or young person be taken out of the custody, charge, or care of the person so convicted, committed for trial, or bound over, and be committed to the care of a relative of the child or young person, or some other fit person, named by the court (such relative or other person being willing to undertake such care), until he attains the age of sixteen years, or for any shorter period, and that court or any court of like jurisdiction may of its own motion, or on the application of any person, from time to time by order renew, vary, and revoke any such order.

(2) If the child or young person has a parent or legal guardian no order shall be made under this section unless the parent or legal guardian has been convicted of or committed for trial for the offence, or is under commitment for trial for having been, or has been proved to the satisfaction of the court making the order to have been, party or privy to the offence, or has been bound over to keep the peace towards the child or young person, or cannot be found.

(3) Every order under this section shall be in writing, and any such order may be made by the court in the absence of the child or young person; and the consent of any person to undertake the care of a child or young person in pursuance of any such order shall be proved in such manner as the court may think sufficient to bind him.

(4) Where an order is made under this section in respect of a person who has been committed for trial, then, if that person is acquitted of the charge, or if the charge is dismissed for want of prosecution, the order shall forthwith be void, except with regard to anything that may have been lawfully done under it.

(5) The Secretary of State may at any time in his discretion discharge a child or young person from the care of any person to whose care he is committed in pursuance of this section, either absolutely or on such conditions as the Secretary of State approves, and may, if he thinks fit, make rules in relation to children or young persons so committed to the care of any person, and to the duties of such persons with respect to such children or young persons.

(6) The Secretary of State, in any case where it appears to him to be for the benefit of a child or young person who has been committed to the care of any person in pursuance of this section, may empower such person to procure the emigration of the child or young person, but, except with such authority, no person to whose care a child or young person is so committed shall procure his emigration.

(7) Nothing in this section shall be construed as preventing the court, instead of making an order as respects a child under this section, from ordering the child to be sent to an industrial school in any case in which the court is authorised to do so under Part IV. of this Act.

**22. Maintenance of child or young person when committed to care of any person under order of court.**—(1) Any person to whose care a child or young person is committed under this Part of this Act shall, whilst the order is in force, have the like control over the child or young person as if he were his parent, and shall be responsible for his maintenance, and the child or young person shall continue in the care of such person, notwithstanding that he is claimed by his parent or any other person; and if any person—



- (a) knowingly assists or induces, directly or indirectly, a child or young person to escape from the person to whose care he is so committed; or
- (b) knowingly harbours, conceals, or prevents from returning to such person, a child or young person who has so escaped, or knowingly assists in so doing;

he shall on summary conviction be liable to a fine not exceeding twenty pounds or to be imprisoned, with or without hard labour, for any term not exceeding two months.

(2) Any court having power so to commit a child or young person shall have power to make the like orders on the parent or other person liable to maintain the child or young person to contribute to his maintenance during such period as aforesaid, and such orders shall be enforceable in like manner as if the child or young person were ordered to be sent to a certified school under Part IV. of this Act, but the limit on the amount of the weekly sum which the parent or such other person may be required under this section to contribute shall be one pound a week instead of the limit fixed under Part IV.

(3) Any such order may be made on the complaint or application of the person to whose care the child or young person is for the time being committed, and either at the time when the order for the committal of the child or young person to his care is made, or subsequently, and the sums contributed by the parent or such other person shall be paid to such person as the court may name, and be applied for the maintenance of the child or young person.

(4) Where an order under this Part of this Act to commit a child or young person to the care of some relative or other person is made in respect of a person who has been committed for trial for an offence, the court shall not have power to make an order under this section on the parent or other person liable to maintain the child or young person prior to the trial of the person so committed.

(5) Any court making an order under this section for contribution by a parent or such other person may in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, further order that such part as the court may see fit of the pension or income be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-mentioned person.

(6) An order under this section may be made by any court before which a person is charged with an offence under this Part of this Act, and without regard to the place in which the person to whom the payment is ordered to be made may reside.

**23. Religious persuasion of person to whom child or young person is committed.**—(1) In determining on the person to whose care the child or young person shall be committed under this Part of this Act, the court shall endeavour to ascertain the religious persuasion to which the child or young person belongs, and shall, if possible, select a person of the same religious persuasion, or a person who gives such undertaking as seems to the court sufficient that the child or young person shall be brought up in accordance with its own religious persuasion, and such religious persuasion shall be specified in the order.

(2) In any case where the child or young person has been placed pursuant to any such order with a person who is not of the same religious persuasion as that to which the child or young person belongs, or who has not given such undertaking as aforesaid, the court which made the order, or any court of like jurisdiction, shall, on the application of any person in that behalf, and on its appearing that a fit person, who is of the same religious persuasion, or who will give such

undertaking as aforesaid, is willing to undertake the care of the child or young person, make an order to secure his being placed with a person who either is of the same religious persuasion or gives such undertaking as aforesaid.

(3) Where a child or young person has been placed with a person who gives such undertaking as aforesaid, and the undertaking is not observed, the child or young person shall be deemed to have been placed with a person not of the same religious persuasion as that to which the child belongs, as if no such undertaking had been given.

**24. Warrant to search for or remove a child or young person.**—(1) If it appears to a justice on information on oath laid by any person who, in the opinion of the justice, is acting in the interests of a child or young person, that there is reasonable cause to suspect—

- (a) that the child or young person has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause the child or young person unnecessary suffering, or to be injurious to his health; or
- (b) that an offence under this Part of this Act, or any offence mentioned in the First Schedule to this Act, has been or is being committed in respect of the child or young person,

the justice may issue a warrant authorising any constable named therein to search for such child or young person, and, if it is found that he has been or is being assaulted, ill-treated, or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of the child or young person, to take him to and detain him in a place of safety, until he can be brought before a court of summary jurisdiction, or authorising any constable to remove the child or young person with or without search to a place of safety and detain him there until he can be brought before a court of summary jurisdiction and the court before whom the child or young person is brought may commit him to the care of a relative or other fit person in like manner as if the person in whose care he was had been committed for trial for an offence under this Part of this Act.

(2) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child or young person to be apprehended and brought before a court of summary jurisdiction, and proceedings to be taken against such person according to law.

(3) Any constable authorised by warrant under this section to search for any child or young person, or to remove any child or young person with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child or young person therefrom.

(4) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person laying the information, if such person so desire, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(5) It shall not be necessary in any information or warrant under this section to name the child or young person.

**25. Visitation of homes.**—(1) The Secretary of State may cause any institution for the reception of poor children or young persons supported wholly or partly by voluntary contributions, and not liable to be inspected by or under the authority of any Government department, to be visited and inspected from time to time by persons appointed by him for the purpose.

(2) Any person so appointed shall have power to enter the institution, and any person who obstructs him in the execution of his duties shall be liable on summary conviction to a fine not exceeding five pounds, and a refusal to allow any person so appointed to enter the institution shall, for the purposes of the provisions of this Part

of this Act relating to search warrants, be deemed to be a reasonable cause to suspect that an offence under this Part of this Act is being committed in respect of a child or young person in the institution.

(3) Where any such institution is carried on in accordance with the principles of any particular religious denomination, the Secretary of State shall, if so desired by the managers of the institution, appoint, where practicable, a person of that denomination to visit and inspect the institution.

(4) Where any such institution is for the reception of girls only, the Secretary of State shall, if so desired by the managers of the institution, appoint, where practicable, a woman to visit and inspect the institution.

(5) Any appointment made under this section may at any time be revoked by the Secretary of State.

#### Power as to Habitual Drunkards.

**26. Power as to habitual drunkards.**—Where it appears to the court by or before which any person is convicted of an offence of cruelty, or of any of the offences mentioned in the First Schedule to this Act, that that person is a parent of the child or young person in respect of whom the offence was committed, or is living with the parent of the child or young person, and is a habitual drunkard within the meaning of the Inebriates Acts, 1879 [42 & 43 Vict. c. 19] to 1900 [51 & 52 Vict. c. 19], the court, in lieu of sentencing that person to imprisonment, may, if it thinks fit, make an order for his detention in a retreat under the said Acts, the licensee of which is willing to receive him, for any period named in the order, not exceeding two years, and the order shall have the like effect, and copies thereof shall be sent to the local authority and Secretary of State in like manner, as if it were an application duly made by that person and duly attested by a justice under the said Acts; and the court may order an officer of the court or constable to remove that person to the retreat, and on his reception the said Acts shall have effect as if he had been admitted in pursuance of an application so made and attested as aforesaid: Provided that—

- (a) an order for the detention of a person in a retreat shall not be made under this section unless that person, having had such notice as the court deems sufficient of the intention to allege habitual drunkenness, consents to the order being made; and
- (b) if the wife or husband of such person, being present at the hearing of the charge, objects to the order being made, the court shall, before making the order, take into consideration any representation made to it by the wife or husband; and
- (c) before making the order the court shall, to such extent as it may deem reasonably sufficient, be satisfied that provision will be made for defraying the expenses of such person during detention in a retreat; and
- (d) nothing in this section shall affect any power of the court to order the person convicted to be detained in a certified inebriate reformatory.

#### Evidence and Procedure.

**27. Evidence of accused person.**—As respects proceedings against any person for an offence under this Part of this Act, or for any of the offences mentioned in the First Schedule to this Act, the Criminal Evidence Act, 1898 [61 & 62 Vict. c. 36], shall apply as if in the schedule to that Act a reference to this Part of this Act and to the First Schedule to this Act were substituted for the reference to the Prevention of Cruelty to Children Act, 1894 [57 & 58 Vict. c. 41].

**28. Extension of power to take depositions of child or young person.**—(1) Where a justice is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court



of any child or young person, in respect of whom an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, is alleged to have been committed, would involve serious danger to the life or health of the child or young person, the justice may take in writing the deposition of the child or young person on oath, and shall thereupon subscribe the deposition and add thereto a statement of his reason for taking the deposition, and of the day when and place where the deposition was taken, and of the names of the persons (if any) present at the taking thereof.

(2) The justice taking any such deposition shall transmit it with his statement—

- (a) if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed; and
- (b) in any other case, to the clerk of the peace of the county or borough in which the deposition has been taken; and the clerk of the peace to whom any such deposition is transmitted shall preserve, file, and record the deposition.

**29. Admission of deposition of child or young person in evidence.]** Where, on the trial of any person on indictment for an offence of cruelty, or any of the offences mentioned in the First Schedule to this Act, the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed would involve serious danger to the life or health of the child or young person, any deposition of the child or young person taken under the Indictable Offences Act, 1848 [11 & 12 Vict. c. 42], or this Part of this Act, shall be admissible in evidence either for or against the accused person without further proof thereof—

- (a) if it purports to be signed by the justice by or before whom it purports to be taken; and
- (b) if it is proved that reasonable notice of the intention to take the deposition has been served upon the person against whom it is proposed to use it as evidence, and that that person or his counsel or solicitor had, or might have had if he had been chosen to be present, an opportunity of cross-examining the child or young person making the deposition.

**30. Evidence of child of tender years.]** Where, in any proceeding against any person for an offence under this Part of this Act, or for any of the offences mentioned in the First Schedule to this Act, the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of that child may be received, though not given upon oath, if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth; and the evidence of the child, though not given on oath, but otherwise taken and reduced into writing in accordance with the provisions of section seventeen of the Indictable Offences Act, 1848 [11 & 12 Vict. c. 42], or of this Part of this Act, shall be deemed to be a deposition within the meaning of that section and that Part respectively:

Provided that—

- (a) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused; and
- (b) Any child, whose evidence is received as aforesaid and who wilfully gives false evidence under such circumstances that, if the evidence had been given

on oath, he would have been guilty of perjury, shall, subject to the provisions of this Act, be liable on summary conviction to be adjudged such punishment as might have been awarded had he been charged with perjury and the case dealt with summarily under section ten of the Summary Jurisdiction Act, 1879 [42 & 43 Vict. c. 49].

**31. Power to proceed with case in absence of child or young person.]** Where in any proceedings with relation to an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, the court is satisfied that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child or young person.

**32. Mode of charging offences and limitation of time.]**—(1) Where a person is charged with committing an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, in respect of two or more children or young persons, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty for each child or young person except upon separate informations.

(2) The same information or summons may also charge any person as having the custody, charge, or care, alternatively or together, and may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with committing all or any of these offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not be liable to a separate penalty for each.

(3) A person shall not be summarily convicted of an offence under this Part of this Act, or of an offence mentioned in the First Schedule to this Act, unless the offence was wholly or partly committed within six months before the information was laid; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

(4) When an offence under this Part of this Act, or any offence mentioned in the First Schedule to this Act, charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

**33. Appeal from summary conviction to quarter sessions.]** When, in pursuance of this Part of this Act, any person is convicted by a court of summary jurisdiction of an offence, or when in the case of any application to a court of summary jurisdiction under this Part of this Act for an order committing a child or young person to the care of any person, or for an order for contribution to the maintenance of a child or young person, any party thereto thinks himself aggrieved by any order or decision of the court, he may appeal against such a conviction, or order, or decision to quarter sessions.

**34. Institution of proceedings by guardians, &c.]**—(1) A board of guardians may institute any proceedings under this Part of this Act for any offence in relation to a child or young person and may, out of their common fund, pay the reasonable costs and expenses of any proceedings so instituted by them.

(2) The like powers of instituting proceedings may, in London, be also exercised by a local authority for the purposes of Part I. of this Act, and the expenses of such proceedings shall be defrayed as expenses of the authority under Part I.

#### Supplemental.

**35. Application of Vexatious Indictments Act.]** Every misdemeanour under this Part of this Act shall be deemed to be an offence within, and subject to, the provisions of the Vexatious In-

dictments Act, 1859 [22 & 23 Vict. c. 17], and any Act amending that Act.

**36. Extension of section ten of 42 & 43 Vict. c. 54.]** Section ten of the Poor Law Act, 1879, shall be amended so as to include in it as one of the associations or societies to which a board of guardians may, with the consent of the Local Government Board, subscribe, any society or body corporate for the prevention of cruelty to children.

**37. Right of parent, &c., to administer punishment.]** Nothing in this Part of this Act shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to such child or young person.

**38. Interpretation of Part II.]**—(1) In this Part of this Act, unless the context otherwise requires, the expression "fit person," in relation to the care of any child or young person, includes any society or body corporate established for the reception or protection of poor children or the prevention of cruelty to children.

(2) For the purposes of this Part of this Act—

Any person who is the parent or legal guardian of a child or young person or who is legally liable to maintain a child or young person shall be presumed to have the custody of the child or young person, and as between father and mother the father shall not be deemed to have ceased to have the custody of the child or young person by reason only that he has deserted, or otherwise does not reside with, the mother and child or young person; and

Any person to whose charge a child or young person is committed by any person who has the custody of the child or young person shall be presumed to have charge of the child or young person; and

Any other person having actual possession or control of a child or young person shall be presumed to have the care of the child or young person.

(3) This Part of this Act shall apply in the case of a child or young person who has before the commencement of this Act been committed to the care of a relative or other fit person by an order made under the Prevention of Cruelty to Children Act, 1904, as if the order had been made under this Part of this Act.

#### PART III.

##### JUVENILE SMOKING.

**39. Penalty on selling tobacco to children and young persons.]** If any person sells to a person apparently under the age of sixteen years any cigarettes or cigarette papers, whether for his own use or not, he shall be liable, on summary conviction, in the case of a first offence to a fine not exceeding two pounds, and in the case of a second offence to a fine not exceeding five pounds, and in the case of a third or subsequent offence to a fine not exceeding ten pounds.

**40. Forfeiture of tobacco.]** It shall be the duty of a constable and of a park keeper, being in uniform, to seize any cigarettes or cigarette papers in the possession of any person apparently under the age of sixteen whom he finds smoking in any street or public place, and any cigarettes or cigarette papers so seized shall be disposed of, if seized by a constable in such manner as the police authority may direct, and if seized by a park keeper in such manner as the authority or person by whom he was appointed may direct, and such constable or park keeper shall be authorised to search any boy so found smoking, but not a girl.

**41. Provisions as to automatic machines for the sale of tobacco.]**—(1) If on complaint to a court of summary jurisdiction it is proved to the satisfaction of the court that any automatic machine for the sale of cigarettes kept on any premises is being extensively used by children or young persons, the court may order the owner of the machine or the person on whose premises the

machine is kept to take such precautions to prevent the machine being so used as may be specified in the order, or, if necessary, to remove the machine, within such time as may be specified in the order. Provided that any person aggrieved by such an order may appeal against it to a court of quarter sessions.

(2) If any person against whom any such order has been made fails to comply with the order, he shall be liable on summary conviction to a fine not exceeding five pounds, and to a further fine not exceeding one pound for each day during which the offence continues.

**42. Exemption for persons employed in trade, &c.]** The provisions of this Part of this Act which make it an offence to sell cigarettes or cigarette papers, and which authorise the seizure of cigarettes and cigarette papers, shall not apply where the person to whom the cigarettes or cigarette papers are sold, or in whose possession they are found, was at the time employed by a manufacturer or dealer in tobacco, either wholesale or retail, for the purposes of his business, or was a boy messenger in uniform in the employment of a messenger company and employed as such at the time.

**43. Application of Part III.]—**(1) For the purposes of this Part of this Act the expression "cigarette" includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking.

(2) This Part of this Act shall apply to tobacco other than cigarettes in like manner as it applies to cigarettes, except that a person shall not be guilty of an offence for selling such other tobacco to a person apparently under the age of sixteen years if he did not know, and had no reason to believe, that it was for the use of that person.

(3) This Part of this Act shall apply to smoking mixtures intended as a substitute for tobacco in like manner as it applies to cigarettes.

#### PART IV.

#### REFORMATORY AND INDUSTRIAL SCHOOLS.

##### Interpretation.

**44. Definitions.]—**(1) For the purposes of this Part of this Act unless the context otherwise requires—

The expression "reformatory school" means a school for the industrial training of youthful offenders, in which youthful offenders are lodged, clothed, and fed, as well as taught;

The expression "industrial school" means a school for the industrial training of children, in which children are lodged, clothed, and fed, as well as taught;

The expression "certified school" means a reformatory or industrial school which is certified in accordance with the provisions of this Part of this Act;

The expression "attendance order" means an attendance order made in pursuance of the Elementary Education Act, 1876 [39 & 40 Vict. c. 79];

The expression "child," used in reference to a child ordered to be sent to a certified industrial school or to be transferred from a certified reformatory to a certified industrial school, applies to that child during the whole period of detention, whether in the industrial school or out on licence, notwithstanding that the child attains the age of fourteen years before the expiration of that period, and, when used in reference to proceedings for the purpose of enforcing an attendance order, includes any person who, by virtue of any enactment, is deemed to be a child for the purposes of the Education Acts, 1870 to 1907.

(2) The persons for the time being having the management or control of a school shall be deemed the managers thereof for the purposes of this Part of this Act.

##### Certification and Inspection of Schools.

**45. Certification of school.]—**(1) The Secretary of State may upon the application of the

managers of any reformatory or industrial school direct the chief inspector of reformatory and industrial schools hereinafter mentioned to examine into the condition and regulations of the school and its fitness for the reception of youthful offenders or children to be sent there under this Part of this Act, and to report to him thereon.

(2) The Secretary of State, if satisfied with the report of the inspector, may certify that the school is fit for the reception of youthful offenders or children to be sent there in pursuance of this Part of this Act.

**46. Inspection of certified schools.]—**(1) The Secretary of State may appoint a chief inspector of reformatory and industrial schools, and such number of inspectors and assistant inspectors as the Treasury may approve to assist the chief inspector; and every person so appointed to assist the chief inspector shall have such of the powers and duties of the chief inspector as the Secretary of State directs, but shall act under the direction of the chief inspector.

(2) The chief and other inspectors shall receive such remuneration and allowances out of money provided by Parliament as the Secretary of State with the consent of the Treasury, may direct.

(3) Every certified school shall, at least once in every year, be inspected by the chief inspector of reformatory and industrial schools, or by an inspector or assistant inspector.

**47. Power of Secretary of State to withdraw certificate.]** The Secretary of State, if dissatisfied with the condition, rules, management, or superintendence of a certified school, may at any time by notice served on the managers of the school declare that the certificate of the school is withdrawn as from a time specified in the notice, being not less than six months after the date of the notice; and at that time the withdrawal of the certificate shall take effect, and the school shall cease to be a certified school:

Provided that the Secretary of State may, if he thinks fit, instead of so withdrawing the certificate, by notice served on the managers of the school, prohibit the admission of youthful offenders or children to the school for such time as may be specified in the notice or until the notice is revoked.

**48. Resignation of certificate by managers.]** The managers of a certified school may, on giving six months', and the executors or administrators of a deceased manager (if only one) of a certified school may, on giving one month's, notice in writing to the Secretary of State of their intention so to do, resign the certificate for the school, and, accordingly, at the expiration of six months or one month (as the case may be) from the date of the notice (unless before that time the notice is withdrawn), the resignation of the certificate shall take effect, and the school shall cease to be a certified school.

**49. Effect of withdrawal or resignation of certificate.]** A youthful offender or child shall not be received into a certified school in pursuance of this Part of this Act after the date of the receipt by the managers of the school of a notice of withdrawal of the certificate for the school or after the date of a notice of resignation of the certificate; but the obligation hereinafter mentioned of the managers to teach, train, lodge, clothe, and feed any youthful offenders or children detained in the school at the respective dates aforesaid shall, except so far as the Secretary of State otherwise directs, continue until the withdrawal or resignation of the certificate takes effect, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the offenders and children detained in the school, whichever may first happen.

**50. Disposal of inmates on withdrawal or resignation of certificate.]** Where a school ceases to be a certified school the youthful offenders or children detained therein shall be by order of the Secretary of State either discharged or transferred to some other certified school in accordance with the provisions of this Part of this Act relating to discharge and transfer.

**51. Auxiliary homes.]** Where the managers of a certified school, or the managers of two or more certified reformatory schools or of two or more certified industrial schools, propose to establish an auxiliary home for the reception of any inmates or any classes of inmates of the school or schools, or to utilize for any such purpose an institution already in existence or about to be established by any other persons, the Secretary of State may, on the like application and report as is required in the case of the schools themselves, certify the home or institution, and the certificate may be withdrawn and resigned in like manner as a certificate of a school, but whilst the home or institution remains certified it shall for such purposes as are specified in the certificate be treated as part of the school or schools to which it is attached.

##### Duties and Powers of Managers.

**52. Liabilities of managers.]** The managers of a certified school may decline to receive any youthful offender or child proposed to be sent to them in pursuance of this Part of this Act, but when they have once accepted any such offender or child they shall be deemed to have undertaken to teach, train, lodge, clothe, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate for the school, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the offenders or children detained in the school, whichever may first happen.

**53. Boarding out of children.]** The managers of a certified industrial school to which a child under the age of eight years is sent may, with the consent of the Secretary of State, board the child out with any suitable person until the child reaches the age of ten years and thereafter for such longer period, with the consent of the Secretary of State, as the managers consider to be advisable in the interests of the child, subject to the exercise by the managers of such powers as to supervision, recall, and otherwise as may be prescribed by regulations made by the Secretary of State; and where a child is so boarded out he shall nevertheless be deemed for the purposes of this Part of this Act to be a child detained in the school, and the provisions of this Part of this Act shall apply accordingly, subject to such necessary adaptations as may be made by Order in Council.

**54. Power to make rules.]** The managers of a certified school may at any time, and shall whenever so required by the Secretary of State, make rules for the management and discipline of the school, but the rules so made shall in all cases be subject to approval by the Secretary of State.

**55. Approval of alterations, &c. of buildings.]** No substantial addition to or alteration in the buildings of a certified school shall be made without the approval in writing of the Secretary of State.

**56. Schemes for superannuation of officers.]—**(1) The managers of any certified school may establish, or join with the managers of one or more other certified schools in establishing, a scheme for the payment of superannuation allowances to officers of the school or schools who become incapable of discharging the duties of their office with efficiency by reason of permanent infirmity of mind or body, or of old age, upon their resigning or otherwise ceasing to hold their offices:

Provided that the scheme shall not provide for payment of any superannuation allowance in any case in which such an allowance would not be payable under the Superannuation (Metropolis) Act, 1866 [29 & 30 Vict. c. 31], or in excess of the amount of any superannuation allowance which would be payable under that Act, in similar circumstances.

(2) The scheme may also provide for the payment under any circumstances under which a gratuity may be paid under the Superannuation (Metropolis) Act, 1866, of a gratuity not exceeding such an amount as is authorised by that Act.



(3) The expenses incurred by the managers of any such school under any such scheme shall be treated as part of the expenses of the management of the school.

*Mode of sending Offenders and Children to Reformatory and Industrial Schools and their Treatment therein.*

57. *Commitment of offenders between twelve and sixteen years of age to reformatory schools.*—

(1) Where a youthful offender, who in the opinion of the court before which he is charged is twelve years of age or upwards but less than sixteen years of age, is convicted, whether on indictment or by a petty sessional court, of an offence punishable in the case of an adult with penal servitude or imprisonment, the court may, in addition to or in lieu of sentencing him according to law to any other punishment, order that he be sent to a certified reformatory school:

Provided that where the offender is ordered to be sent to a certified reformatory school he shall not in addition be sentenced to imprisonment.

(2) Where such an order has been made in respect of a youthful offender of the age of fourteen years or upwards, and no certified reformatory school can be found the managers of which are willing to receive him, the Secretary of State may order the offender to be brought before the court which made the order or any court having the like jurisdiction, and that court may in lieu of the detention order make such order or pass such sentence as the court may determine, so however that the order or sentence shall be such as might have been originally made or passed in respect of the offence.

58. *Children liable to be sent to industrial schools.*—(1) Any person may bring before a petty sessional court any person apparently under the age of fourteen years who—

- (a) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise), or being in any street premises or place for the purpose of so begging or receiving alms; or
- (b) is found wandering and not having any home or settled place of abode, or visible means of subsistence, or is found wandering and having no parent or guardian, or a parent or guardian who does not exercise proper guardianship; or
- (c) is found destitute, not being an orphan and having both parents or his surviving parent, or in the case of an illegitimate child his mother, undergoing penal servitude or imprisonment; or
- (d) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; or
- (e) is the daughter, whether legitimate or illegitimate, of a father who has been convicted of an offence under section four or section five of the Criminal Law Amendment Act, 1885 [48 & 49 Vict. c. 69], in respect of any of his daughters, whether legitimate or illegitimate; or
- (f) frequents the company of any reputed thief, or of any common or reputed prostitute; or
- (g) is lodging or residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child,

and the court before which a person is brought as coming within one of those descriptions, if satisfied on inquiry of that fact, and that it is expedient so to deal with him, may order him to be sent to a certified industrial school. Provided that a child shall not be treated as coming within the description contained in paragraph (f) if the only common or reputed prostitute

whose company the child frequents is the mother of the child, and she exercises proper guardianship and due care to protect the child from contamination.

(2) Where a child apparently under the age of twelve years is charged before a court of assize or quarter sessions or a petty sessional court with an offence punishable in the case of an adult by penal servitude or a less punishment, the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school.

(3) Where a child, apparently of the age of twelve or thirteen years, who has not previously been convicted, is charged before a petty sessional court with an offence punishable in the case of an adult by penal servitude or a less punishment, and the court is satisfied that the child should be sent to a certified school but, having regard to the special circumstances of the case, should not be sent to a certified reformatory school, and is also satisfied that the character and antecedents of the child are such that he will not exercise an evil influence over the other children in a certified industrial school, the court may order the child to be sent to a certified industrial school, having previously ascertained that the managers are willing to receive the child:

Provided that the Secretary of State may, on the application of the managers of the industrial school, by order transfer the child to a certified reformatory school.

(4) Where the parent or guardian of a child proves to a petty sessional court that he is unable to control the child, and that he desires the child to be sent to an industrial school under this Part of this Act, the court, if satisfied on inquiry that it is expedient so to deal with the child, and that the parent or guardian understands the results which will follow, may order him to be sent to a certified industrial school:

Provided that, if the court thinks that it is expedient that the child instead of being sent to a certified industrial school should be placed under the supervision of a probation officer, the court may deal with him in like manner as, if he had been charged with an offence, the court might have dealt with him under the Probation of Offenders Act, 1907 [7 Edw. 7. c. 17], so however that the recognisance on entering into which he is discharged shall bind him to appear for having a detention order made against him.

(5) Where the guardians of a poor law union or the managers of a district poor law school satisfy a petty sessional court that any child maintained in a workhouse or district poor law school is refractory or is the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment, and that it is desirable that the child be sent to an industrial school under this Part of this Act, the court may, if satisfied that it is expedient so to deal with the child, order him to be sent to a certified industrial school.

(6) A petty sessional court may, on the complaint of a local education authority, made in accordance with the provisions of section twelve of the Elementary Education Act, 1876, for the purpose of enforcing an attendance order, order a child to be sent to a certified industrial school as provided in that section:

Provided that, if upon any such complaint it appears to the court that the child comes within one of the descriptions mentioned in sub-section one of this section, the court may, on the application of the local education authority, proceed under that sub-section and not under this sub-section or section twelve of the Elementary Education Act, 1876.

(7) Where under this section a court is empowered to order a child to be sent to a certified industrial school the court, in lieu of ordering him to be so sent, may in accordance with the provisions of Part II. of this Act, make an order for the committal of the child to the care of a relative or other fit person named by the court, and the provisions of that Part shall, so far as applicable, apply as if the order were an order under that Part.

(8) It shall be the duty of the police authority to take proceedings under sub-section one of this

section as respects any child in their district who appears to the authority to come within one of the descriptions mentioned in that sub-section, unless—

- (a) the case is one within the cognisance of the local education authority and that authority decide themselves to take the proceedings; or
- (b) proceedings are being taken by some other person; or
- (c) the police authority are satisfied that the taking of proceedings is undesirable in the interests of the child.

59. *Power to commit young persons to care of relative or fit person in certain cases.*—Any person may bring before a petty sessional court any person apparently of the age of fourteen or fifteen years so circumstanced that if he were a child he would come within one or other of the descriptions mentioned in sub-section one of the last foregoing section, and the court, if satisfied on inquiry of that fact and that it is expedient so to deal with him, may, in accordance with the provisions of Part II. of this Act, make an order for his committal to the care of a relative or other fit person named by the court, and the provisions of that Part shall, so far as applicable, apply as if the order were an order under that Part.

60. *Power in such cases to place young persons under supervision of probation officer.*—Where under the provisions of this Part of this Act an order is made for the committal of a child or young person to the care of a relative or other fit person named by the court, the court may in addition to such order make an order under the Probation of Offenders Act, 1907, that the child or young person be placed under the supervision of a probation officer:

Provided that the recognisance into which the child, if not charged with an offence, or the young person is required to enter, shall bind him to appear and submit to the further order of the court.

61. *Power to defer operation of order.*—An order of a court ordering a youthful offender or child to be sent to and detained in a certified school (in this Act referred to as a detention order) may, if the court think fit, be made to take effect either immediately or at any later date specified therein, regard being had to the age or health of the youthful offender or child.

62. *Choice of school.*—(1) The school to which a youthful offender or child is to be sent under a detention order shall be such school as may be specified in the order, being some certified school (whether situate within the jurisdiction of the court making the order or not) the managers of which are willing to receive the youthful offender or child:

Provided that, if it is found impossible to specify the school in the detention order, the school shall, subject to the provisions of this Act with respect to the determination of the place of residence of a youthful offender or child, be such as a justice having jurisdiction in the place where the court which made the order sat may by endorsement on the detention order direct.

(2) Where the court is satisfied that a youthful offender or child is, by reason of mental or physical defect, incapable of receiving proper benefit from industrial training in an ordinary certified school, but is not incapable by reason of such defect of receiving benefit from industrial training in a certified school where special provision is made for the training of youthful offenders or children suffering from such defect, the detention order (if any) shall be for detention in a school where such provision is made.

63. *Temporary detention until sent to certified school.*—II—

- (a) a detention order is made but is not to take effect immediately; or,
- (b) at the time specified for the order to take effect the youthful offender or child is unfit to be sent to a certified school; or,



(c) the school to which the youthful offender or child is to be sent cannot be ascertained until inquiry has been made,

the court may make an order committing him either to custody in any place to which he might be committed on remand under Part V. of this Act, or to the custody of a relative or other fit person to whose care he might be committed under Part II. of this Act, and he shall be kept in that custody accordingly until he is sent to a certified school in pursuance of the detention order.

**64. Conveyance to school.**—(1) The person by whom any youthful offender or child ordered to be sent to a certified school is detained shall at the appointed time deliver him into the custody of the constable or other person responsible for his conveyance to school, who shall deliver him to the superintendent or other person in charge of the school in which he is to be detained, together with the order or other document in pursuance of which the offender or child was detained and is sent to the school.

(2) The detention order in pursuance of which the youthful offender or child is sent to a certified school shall be a sufficient authority for his conveyance to and detention in the school or any other school to which he is transferred under this Part of this Act.

**65. Period of detention.**—The detention order shall specify the time for which the youthful offender or child is to be detained in the school, being—

- (a) in the case of a youthful offender sent to a reformatory school, not less than three and not more than five years, but not in any case extending beyond the time when the youthful offender will, in the opinion of the court, attain the age of nineteen years; and
- (b) in the case of a child sent to an industrial school, such time as to the court may seem proper for the teaching and training of the child, but not in any case extending beyond the time when the child will, in the opinion of the court, attain the age of sixteen years.

**66. Provision as to religious persuasion.**—(1) The court or justice, in determining the certified school to which a youthful offender or child is to be sent, shall endeavour to ascertain the religious persuasion to which the offender or child belongs, and the detention order shall, where practicable, specify the religious persuasion to which the offender or child appears to belong, and a school conducted in accordance with that persuasion shall, where practicable, be selected.

(2) A minister of the religious persuasion specified in the order as that to which a youthful offender or child sent to a certified school appears to belong may visit the offender or child at the school on such days, at such times, and on such conditions, as may be fixed by the Secretary of State, for the purpose of affording him religious assistance and also for the purpose of instructing him in the principles of his religion.

(3) Where an order has been made for sending a youthful offender or child to a certified school which is not conducted in accordance with the religious persuasion to which the offender belongs, the parent, legal guardian, nearest adult relative, or person entitled to the custody of the offender or child may apply—

- (a) if the detention order was made by a petty sessional court, to a petty sessional court acting in and for the place in and for which the court which made the order acted; and
- (b) in any other case, to the Secretary of State.

to remove or send the offender or child to a certified school conducted in accordance with the offender's or child's religious persuasion, and the court or Secretary of State shall, on proof of the offender's or child's religious persuasion, comply with the request of the applicant:

Provided that—

- (i) the application must be made before the

offender or child has been sent to a certified school, or within thirty days after his arrival at the school; and

- (ii) the applicant must show to the satisfaction of the court or Secretary of State that the managers of the school named by him are willing to receive the offender or child;
- (iii) nothing in this section shall be construed as preventing any such person as aforesaid from making an application to the Secretary of State after the expiration of the said period of thirty days to exercise the powers of transfer conferred on him by the other provisions of this Act.

**67. Placing out on licence.**—(1) Where a youthful offender or child is detained in a certified school, the managers of the school may at any time, with the consent—

- (a) in the case of a child sent to an industrial school at the instance of the local education authority, of that authority; and
- (b) in any other case of the Secretary of State;

or after the expiration of eighteen months of the period of detention without any such consent, by licence permit the offender or child to live with any trustworthy and respectable person named in the licence willing to receive and take charge of him:

Provided that where the licence is granted in respect of a child under the age of fourteen years it shall be conditional on the child attending as a day scholar, in accordance with the by-laws in force in the place where he resides, some school named in the licence, being a certified efficient school within the meaning of the Elementary Education Act, 1876 [39 & 40 Vict. s. 79].

(2) Any licence so granted shall be in force until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The managers of the school may at any time by order in writing revoke any such licence, and order the offender or child to return to the school.

(4) Any youthful offender or child escaping from the person with whom he is placed in pursuance of this section, or refusing to return to the school when required to do so on the revocation or forfeiture of his licence, shall be liable to the same penalty as if he had escaped from the school itself.

(5) The time during which a youthful offender or child is absent from a certified school in pursuance of a licence under this section shall be deemed to be part of the time of his detention in the school: Provided that, where a youthful offender or child has failed to return to the school on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the school.

(6) Where a licence has been revoked or forfeited and the youthful offender or child refuses or fails to return to the school, a court of summary jurisdiction, if satisfied by information on oath that there is reasonable ground for believing that his parent or guardian could produce the youthful offender or child, may issue a summons requiring the parent or guardian to attend at the court on such day as may be specified in the summons, and to produce the child, and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of this Part of this Act, be liable on summary conviction to a fine not exceeding one pound.

**68. Supervision of youthful offenders and children after the expiration of period of detention.**—(1) Every youthful offender sent to a certified reformatory school shall, on the expiration of the period of his detention, if that period expires before he attains the age of nineteen years, remain up to the age of nineteen under the supervision of the managers of the school.

(2) Every child sent to an industrial school shall, from the expiration of the period of his detention, remain up to the age of eighteen under

the supervision of the managers of the school: Provided that this sub-section shall not apply in any case where the child was ordered to be sent to an industrial school for the purpose only of enforcing an attendance order made in consequence of his parent, guardian, or other person legally liable to maintain him neglecting to provide efficient elementary instruction for him.

(3) The managers may grant to any person under their supervision a licence in the manner provided by this Part of this Act, and may revoke any such licence, and recall any such person to the school; and any person so recalled may be detained in the school for a period not exceeding three months, and may at any time be again placed out on licence: Provided that—

- (a) a person shall not be so recalled unless the managers are of opinion that the recall is necessary for his protection; and
- (b) the managers shall send to the chief inspector of reformatory and industrial schools an immediate notification of the recall of any person, and shall state the reasons for his recall; and
- (c) they shall again place the person out as soon as possible, and at latest within three months after the recall, and shall forthwith notify the chief inspector that the person has been placed out.

(4) A licence granted to a youthful offender or child before the expiration of his period of detention, shall, if he is liable to be under supervision in accordance with this section, continue in force after the expiration of that period, and may be revoked in manner provided by this Part of this Act.

(5) The Secretary of State may at any time order that a person under supervision under this section shall cease to be under such supervision.

(6) When a youthful offender or child is under the supervision of the managers of a certified school it shall not be lawful for his parent to exercise, as respects the youthful offender or child, his rights and powers as parent in such a manner as to interfere with the control of the managers over the youthful offender or child.

**69. Discharge and transfer.**—(1) The Secretary of State may at any time order a youthful offender or a child to be discharged from a certified school, either absolutely or on such conditions as the Secretary of State approves, and may, where the order of discharge is conditional, revoke the order on the breach of any of the conditions on which it was granted, and thereupon the youthful offender or child shall return to school, and if he fails to do so he and any person who knowingly harbours or conceals him or prevents him from returning to school shall be liable to the same penalty as if the youthful offender or child had escaped from the school.

(2) The Secretary of State may order—

- (a) a youthful offender or child to be transferred from one certified reformatory school to another, or from one certified industrial school to another;
- (b) a youthful offender under the age of fourteen years detained in a certified reformatory school to be transferred to a certified industrial school;
- (c) a child over the age of twelve years detained in a certified industrial school, who is found to be exercising an evil influence over the other children in the school, to be transferred to a certified reformatory school;

so however that the whole period of the detention of the offender or child shall not be increased by the transfer.

(3) Where a youthful offender or child is detained in a certified school in one part of the United Kingdom, the central authority for that part of the United Kingdom may, subject to the provisions of this section, direct the youthful offender or child to be transferred to a certified school in another part of the United Kingdom if the central authority for that other part consents.

For the purpose of this provision "central authority" means the Secretary of State, the Secretary for Scotland, or the Chief Secretary, as the case may be.

**70. Power to apprentice or dispose of child.]** If any youthful offender or child detained in or placed out on licence from a certified school, or a person when under the supervision of the managers of such a school, conducts himself well, the managers of the school may, with his own consent, apprentice him to, or dispose of him in, any trade, calling, or service, including service in the Navy or Army, or by emigration, not withstanding that his period of detention or supervision has not expired; and such apprenticing or disposition shall be as valid as if the managers were his parents:

Provided that where he is to be disposed of by emigration, and in any case unless he has been detained for twelve months, the consent of the Secretary of State shall also be required for the exercise of any power under this section.

#### Offences in relation to Certified Schools.

**71. Refusal to conform to rules.]—(1)** If a youthful offender detained in a certified reformatory school is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable upon summary conviction to have the period of his detention in the reformatory school increased by such period not exceeding six months as the court directs, or, if of the age of sixteen years or upwards, to be imprisoned, with or without hard labour, for any term not exceeding three months; and if sentenced to imprisonment he shall, at the expiration of the term thereof, by and at the expense of the managers of the school in which the offence was committed, be brought back to a certified reformatory school, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his being sent to prison.

(2) If a child of the age of twelve years or upwards detained in a certified industrial school is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable on summary conviction to be sent to a certified reformatory school, and to be there detained, subject and according to the provisions of this Part of this Act.

(3) A period of detention may be increased in pursuance of this section notwithstanding that the period as so increased will extend beyond the limits imposed by this Part of this Act.

**72. Escaping from school.]—(1)** If a youthful offender detained in a certified reformatory school escapes from the school, he may, at any time before the expiration of his period of detention, be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school from which he escaped is situate; and he shall be liable on summary conviction to be brought back to the reformatory school and to have the period of his detention therein increased by such period not exceeding six months as the court directs, or, if of the age of sixteen years or upwards, to be imprisoned, with or without hard labour, for any term not exceeding three months; and if sentenced to imprisonment he shall, at the expiration of the term thereof, be brought back to a certified reformatory school.

(2) If a child detained in a certified industrial school escapes from the school, he may at any time before the expiration of his period of detention be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school from which he escaped is situate; and he shall be liable, on summary conviction, to be brought back to the school from which he escapes, or, if of the age of twelve years or upwards, to be sent to a certified reformatory school and to be there detained subject and according to the provisions of this Part of this Act.

(3) In computing the time during which a youth-

ful offender or child who, having escaped, is brought back to a certified school is thereafter liable to be detained in that school, the time during which he was absent from school, including the time (if any) during which he was imprisoned under this section, shall not be reckoned as part of the period of detention.

(4) The expenses of bringing a youthful offender or child back to the school shall be borne by the managers of the school from which he escaped.

(5) Where the period for which a youthful offender or child, on being brought back to the school from which he escaped, is liable to be detained therein would, by virtue of this section, whether on account of any increase in the period of detention or otherwise, extend beyond the limits imposed by this Part of this Act, the youthful offender or child may notwithstanding anything in this Part of this Act be detained in the school in accordance with this section.

(6) If any person—

(a) knowingly assists or induces directly or indirectly an offender or child detained in or placed out on licence from a certified school to escape from the school or from any person with whom he is placed out on licence;

(b) knowingly harbours, conceals, or prevents from returning to school, or to any person with whom he is placed out on licence, an offender or child who has so escaped, or knowingly assists in so doing;

he shall, on summary conviction, be liable to be imprisoned for any term not exceeding two months, with or without hard labour, or to a fine not exceeding twenty pounds.

#### Expenses of Certified Schools.

**73. Contributions from Treasury.]** There shall be paid out of money provided by Parliament such sums on such conditions as the Secretary of State may, with the approval of the Treasury, recommend towards the expenses of any youthful offender or child detained in a certified school, including the expenses of removal in the case of any offender or child ordered to be transferred from one school to another and towards the expenses of disposing of any such offender or child by emigration:

Provided that the contribution shall not exceed two shillings per head per week for children detained in an industrial school on the application of their parents or guardians.

**74. Duties and powers of local authorities with respect to the maintenance, &c., of inmates of certified schools.]—(1)** Where a youthful offender is ordered to be sent to a certified reformatory school, it shall be the duty of the council of the county or county borough in which he resides (to be specified in the order) to provide for his reception and maintenance in a certified reformatory school suitable to the case, having regard to the requirements of this Part of this Act.

(2) Where a child is ordered to be sent to a certified industrial school, it shall be the duty of the local education authority of the district in which he resides (to be specified in the order) to provide for his reception and maintenance in a certified industrial school suitable to the case, having regard to the requirements of this Part of this Act.

(3) For the purposes of the foregoing provisions of this section a youthful offender or child shall be presumed to reside in the place where the offence was committed, or the circumstances which rendered him liable to be sent to a certified school occurred, unless it is proved that he resided in some other place.

(4) Where the court by which the detention order is made is a court of assize or a court of quarter sessions, the court shall remit to a court of summary jurisdiction for the place where the youthful offender or child was committed for trial the determination of his place of residence.

(5) The obligation imposed under this section on a local education authority shall not apply in the case of a child sent to a certified industrial school—

(a) at the desire of his parent or guardian as being a child whom the parent or guardian is unable to control; or

(b) at the instance of the guardians of a poor law union or the managers of a district poor law school as being a refractory child, or as being the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment; or

(c) being a child who had no settled place of abode and who habitually wandered from place to place through the districts of various local education authorities; or

(d) in respect of whose maintenance in a certified school no contribution is paid out of moneys provided by Parliament.

But the local education authority who would but for this provision have been responsible for the maintenance of the child may, if they think fit, contribute towards his maintenance or provide for his maintenance in a certified school in any such case.

(6) An order for the detention of a child in a certified industrial school shall not be made by a petty sessions court unless the local education authority, which by virtue of the order are responsible for providing for the reception and maintenance of the child in a certified school, have been given an opportunity of being heard.

(7) Where a local authority, that is to say, as respects reformatory schools the council of a county or county borough, and as respects industrial schools a local education authority, are aggrieved by the decision of a court as to the place of residence of a youthful offender or child, they may within three months after the making of the detention order apply to a petty sessions court acting in and for the place for which the court which made the order or determined the place of residence acted, and that court, on proof to its satisfaction that the youthful offender or child was resident in the area of another local authority, and after giving such other local authority an opportunity of being heard, may transfer the liability to maintain the youthful offender or child in a certified school to that other local authority, and may order that other authority to repay to the first-mentioned local authority any expenses incurred by them in respect of the youthful offender or child under the detention order, and an appeal shall lie from the decision of the court to a court of quarter sessions; but nothing in this provision shall affect the liability of the first-mentioned local authority under the detention order until an order has been made transferring the liability to another local authority.

(8) For the purpose of the performance of their duties under this Part of this Act, a local authority—

(a) may contract with the managers of any certified school for the reception and maintenance therein of youthful offenders or children for whose reception and maintenance the authority are required under this section to make provision;

(b) may, with the approval of the Secretary of State, undertake or combine with any other such authority in undertaking, or contribute such sums of money upon such conditions as they may think fit towards, the establishment, building, alteration, enlargement, re-building, or management of a certified school, or the purchase of any land required for the use of an existing certified school, or for the site of any school intended to be a certified school.

(9) A local authority may contribute towards the ultimate disposal of any inmate of a certified school for whose maintenance in such a school the authority are under this section responsible, or towards whose maintenance the authority have voluntarily contributed.

(10) The local authority responsible for the maintenance of a youthful offender or child in a certified school under this section shall continue



responsible for his maintenance in the event of his transfer to another certified school, notwithstanding that having been originally ordered to be sent to a reformatory school he is subsequently transferred to an industrial school, or having been originally ordered to be sent to an industrial school he is subsequently transferred to or ordered by a court to be sent to a reformatory school:

Provided that, before any such youthful offender or child is ordered to be transferred from one school to another, notice shall be given to the local authority responsible for his maintenance, and that authority shall be given an opportunity of making representations to the Secretary of State with respect thereto.

(11) Where a child has been ordered to be sent to a certified industrial school at the instance of the guardians of a poor law union or the managers of a district poor law school as refractory, or as the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment, the guardians or managers shall contribute towards the maintenance of the child in a certified industrial school such sums as may be agreed upon between them and the managers of the certified school to which the child is ordered to be sent, or in default of agreement as may be fixed by the Secretary of State.

(12) Land may be acquired by a local authority for the purposes of this Part of this Act—

(a) as respects reformatory schools, under and in accordance with the Local Government Act, 1888 [51 & 52 Vict. c. 41], in the case of the council of a county, and as for the purposes of the Public Health Acts in the case of the council of a county borough;

(b) as respects industrial schools, as for the purposes of the Education Acts, 1870 to 1907.

(13) The expenses incurred by a local authority under this Part of this Act shall be defrayed—

(a) as respects reformatory schools, as expenses for general county purposes in the case of the council of a county, and out of the borough fund or borough rate in the case of the council of a county borough;

(b) as respects industrial schools, as expenses incurred for the purposes of elementary education.

(14) Money may be borrowed by a local authority for the purposes of defraying or contributing towards the expenses of establishing, building, altering, enlarging, rebuilding, or purchasing land for the use or site of—

(a) a reformatory school, under and in accordance with the Local Government Act, 1888, in the case of the council of a county, and under and in accordance with the Municipal Corporations Act, 1882, in the case of a council of a county borough;

(b) an industrial school, under and in accordance with the Education Acts, 1870 to 1907:

Provided that the maximum period within which money so borrowed is to be repaid shall be sixty years.

(15) Where two or more local education authorities, with the approval of the Secretary of State, agree to combine for any of the purposes of this section, the agreement may provide for the appointment of a joint body of managers, and for the apportionment of the contributions to be paid by each authority and any other matters which, in the opinion of the Secretary of State, are necessary for carrying out the agreement, and the expenses of any such joint body of managers shall be paid in the proportions specified in the agreement by each of the authorities, and their receipts and payments shall be audited in manner provided by section six of the Education (Administrative Provisions) Act, 1907 [7 Edw. 7. c. 43].

(16) For the purpose of obtaining the approval of the Secretary of State where required by this section, there shall be forwarded to the Secretary

of State particulars of the proposed establishment or purchase, and a plan of the proposed alteration, enlargement, rebuilding, or building drawn on such scale and accompanied by such particulars and estimate of cost as the Secretary of State thinks fit to require, and the Secretary of State may approve the plan and particulars submitted to him, with or without modification, or may disapprove them.

(17) Where before the commencement of this Act a county council have, in their capacity of county council, established an industrial school, the school had become the property of the county council in their capacity of local education authority, and such adjustments as may be required for the purpose shall be made between the county council and the local education authorities within the county (including the county council in their capacity of local education authority), and section sixty-eight of the Local Government Act, 1894 [56 & 57 Vict. c. 73], shall apply to such adjustments in like manner as it applies to adjustments required for the purposes of that Act.

(18) As respects the city of London the Common Council shall, notwithstanding anything in this section, be the local authority liable for providing for the reception and maintenance in a certified reformatory school of a youthful offender committed by a petty sessional court acting in for the city:

Provided that nothing in this provision shall exempt the city of London from contributing towards the expenses incurred by the London County Council in respect of reformatory schools, but the London County Council shall in each year repay to the Common Council for each youthful offender maintained by that council a sum equal to the average cost to the London County Council in that year of the maintenance of a youthful offender in a reformatory school for whose maintenance the London County Council are responsible, which cost shall be ascertained in accordance with the directions of the Secretary of State.

**75. Contributions by parents.**—(1) The parent, or other person liable to maintain a youthful offender or child ordered to be sent to and detained in a certified school, shall, if able to do so, contribute to his maintenance therein a sum not exceeding such sum as may be declared by Order in Council to represent approximately the average cost of maintenance of youthful offenders or children in the class of school to which such school belongs in the locality in which such school is situate.

(2)—(a) The court by which a detention order is made shall at the time of making that order, unless it considers that it is not in possession of the necessary information; and

(b) any petty sessional court having jurisdiction at the place where such parent or other person resides may, on complaint being made by or at the instance of the chief inspector of reformatory and industrial schools, at any time whilst the offender or child is detained in the school;

make an order on such parent or other person for the payment to the chief inspector of such weekly sum, not exceeding such sum as aforesaid, as having regard to the ability of the parent or other person seems reasonable during the whole or any part of the time for which the offender or child is liable to be detained in the school:

Provided that the court making the detention order, if a court of assize or court of quarter sessions, may, if it thinks fit, remit the case to a court of summary jurisdiction for the place where the offender or child was committed for trial, for the purpose of making an order under this section, and upon the case being so remitted any such court of summary jurisdiction shall have power to make any such order under this section as the court which made the detention order might have made.

(3) Every such order may specify the time during which the payment is to be made, or may direct the payment to be made until further order, and shall be enforceable as an order of attachment.

(4) Any order made under this section may, on

application being made either by the person on whom the order is made, or by or at the instance of the chief inspector, and on fourteen days' notice of such application being given to the chief inspector or person on whom the order was made, be varied by any court which would have had power to make the order.

(5) An order made under this section shall be binding on the person on whom it is made:

Provided that if that person was not summoned to attend the sitting of the court at which the order was made, the order shall be served on him in manner prescribed by rules of court, and shall be binding on him unless he makes an application against it within the time prescribed by rules of court to the court by which the order was made or any court of like jurisdiction on the ground either that he is not liable to maintain the offender or child, or that he is unable to contribute the sum specified in the order, and on any such application being made the court may confirm the order with or without modifications or may rescind it.

(6) Where a parent or other person has been ordered under this section to contribute to the maintenance of a youthful offender or child, he shall give notice of any change of address to the chief inspector of reformatory and industrial schools, and, if he fails to do so without reasonable excuse, he shall be liable on summary conviction to a fine not exceeding two pounds.

(7) All sums received under this section shall be paid into the Exchequer, but, if the amount received in respect of any child in an industrial school exceeds the contribution from the Treasury in respect of that child, the excess shall be paid to the managers of the school and shall not be paid into the Exchequer.

(8) The Secretary of State may in his discretion remit wholly or partially any payment ordered to be made under this section.

(9) It shall be the duty of a constable, if so required by the chief inspector of reformatory and industrial schools, to take proceedings under this section on behalf of the chief inspector.

(10) Where there is some person, other than the parent, liable to maintain a youthful offender or child, an order under this section may be made on that person notwithstanding that there may be also a parent.

(11) Any court making an order under this section for contribution by a parent or other such person may, in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, further order that such part as the court may see fit of the pension or income be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-named person.

**76. Expenses of conveyances and clothing.**—(1) The expense of conveying to any certified reformatory school any youthful offender who has been directed to be detained in such a school, and the expense of proper clothing for him requisite for his admission to the school, shall be defrayed out of moneys provided by Parliament.

(2) The expense of conveying to a certified industrial school a child ordered to be sent there shall be defrayed by the police authority by whom he is conveyed, and shall be deemed part of the current expenses of that authority:

Provided that, where a child is committed to a certified industrial school at the instance of a local education authority, the authority may pay the expense of and incidental to the conveyance of the child to and from the school, and the sending of the child out on licence or bringing back the child on the revocation or forfeiture of a licence.

#### Day Industrial Schools.

**77. Establishment, &c., of day industrial schools.**—(1) If the Secretary of State is satisfied that, owing to the circumstances of any class of population in the area of any local education authority, a school in which industrial training,



elementary education, and one or more meals a day, but not lodging, are provided is necessary or expedient for the proper training and control of the children of that class, he may, on the like application and report as is required by this Part of this Act in the case of industrial schools, certify any such school (in this Act referred to as a day industrial school) as fit for the reception of children to be sent there in pursuance of the provisions of this Part of this Act relating to day industrial schools.

(2) A certified day industrial school shall be deemed to be a certified efficient school within the meaning of the Elementary Education Act, 1876 [39 & 40 Vict. c. 79].

(3) A school shall not at the same time be a day industrial school and a reformatory or industrial school.

(4) If the Secretary of State is of opinion that, by reason of a change of circumstances or otherwise, a certified day industrial school ceases to be necessary or expedient for the proper training and control of the children of any class of population in the neighbourhood of that school, he may, after due notice, withdraw the certificate of the school, and thereupon the school shall cease to be a certified day industrial school.

**78. Power to send children to day industrial schools.]**—(1) Any child authorised by this Part of this Act to be sent to a certified industrial school may, if the court before which the child is brought thinks it expedient, be sent to a certified day industrial school.

(2) Any child sent to a certified day industrial school by an order of a court (other than an attendance order) may during the period specified in the order be there detained during such hours as may be authorised by the rules of the school approved by the Secretary of State.

(3) The school must be within such distance of the residence of the child as may be prescribed by Order in Council under this Part of this Act, but need not be situated within the jurisdiction of the court making the order.

**79. Reception of child under attendance order or without order.]** The managers of a certified day industrial school may, upon the request of a local education authority and of the parent or guardian of, or other person legally liable to maintain, a child, and upon the undertaking of the parent, guardian, or other person to pay towards the industrial training and meals of the child such sum as a Secretary of State may authorise, receive the child into the school under an attendance order or without an order of a court.

**80. Contributions by the Treasury.]** There shall be paid out of money provided by Parliament towards the custody, industrial training, elementary education, and meals of children sent to a day industrial school such sums, on such conditions, as the Secretary of State, with the approval of the Treasury, may recommend:

Provided that—

- (a) the conditions of a parliamentary contribution to a day industrial school shall provide that the education given in the school shall be on such level of efficiency as would enable the school, if a public elementary school, to obtain a parliamentary grant;
- (b) any conditions recommended by the Secretary of State for the purposes of contributions to a day industrial school shall be laid before Parliament in the same manner as minutes of the Board of Education relating to the annual parliamentary grant.

**81. Powers of local education authorities.]** A local education authority shall have the same powers in relation to a certified day industrial school as they have in relation to a certified industrial school, but nothing in this Act shall be construed as imposing on any such authority an obligation to provide for the reception and maintenance of a child in a certified day industrial school.

**82. Contributions by parents.]**—(1) Where a court orders a child to be sent to a certified day industrial school, the court shall also order the

parent of the child, or other person liable to maintain him, to contribute to his industrial training and meals in the school such sum as is named in the order, not exceeding such sum as may be declared by Order in Council to represent approximately the average cost of industrial training and meals in day industrial schools in the locality in which the school to which the child is sent is situate.

(2) It shall be the duty of the local education authority to obtain and enforce the order, and every sum paid under the order shall be paid over to the local education authority in aid of their expenses for elementary education under the Education Acts, 1870 to 1907.

(3) If a parent or other person is unable to pay the sum required by the order to be paid, he shall apply to the guardians of the poor law union comprising the parish in which the parent or other person is resident, who, if satisfied of such inability, shall give the parent or other person sufficient relief to pay the sum, or so much thereof as they consider him unable to pay.

**83. Application to day industrial schools of provisions relating to industrial schools.]** The provisions of this Part of this Act with respect to industrial schools shall, so far as applicable, apply to certified day industrial schools, subject to such modifications as are made therein by this Part of this Act: Provided that His Majesty may by Order in Council make such further modifications of those provisions as may appear to His Majesty to be necessary or proper for adapting those provisions to day industrial schools, and any such Order may provide that a child may be punished for an offence by being sent to a certified industrial school in lieu of a certified reformatory school, or may otherwise mitigate any punishment imposed by the provisions of this Part of this Act in relation to industrial schools.

#### Supplemental Provisions.

**84. Power to send offenders conditionally pardoned to reformatory schools.]** Where a youthful offender has been sentenced to imprisonment or penal servitude, and has been pardoned by His Majesty on condition of his placing himself under the care of some charitable institution for the reception and reformation of youthful offenders, the Secretary of State may direct him, if under the age of sixteen years, to be sent to a certified reformatory school, the managers of which consent to receive him, for a period of not less than three and not more than five years, but not in any case extending beyond the time when he will in the opinion of the Secretary of State attain the age of nineteen years; and thereupon the offender shall be subject to all the provisions of this Part of this Act as if he had been originally sentenced to detention in a certified reformatory school.

**85. Powers of school officers.]** Every officer authorised by the managers of a certified school or by a local education authority to take charge of any youthful offender or child ordered to be detained under this Part of this Act for the purpose of conveying him to or from the school, or of apprehending him and bringing him back to the school in case of his escape or refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, protection and privileges of a constable.

**86. Advertisements of grant, &c., of certificate.]** A notice of the grant of a certificate to a reformatory or industrial school, or of withdrawal or resignation of such a certificate, shall within one month be advertised by order of the Secretary of State in the London Gazette.

**87. Orders and notices.]**—(1) An order or other act of the Secretary of State under this Part of this Act may be signified under the hand of the Secretary of State or of an under-secretary.

(2) An order or other act of the managers of a certified school under this Part of this Act may be signified under the hands of the managers or their secretary or clerk.

(3) Any notice may be served on the managers of a certified school by being delivered personally to any one of them, or by being sent by post or otherwise, in a letter addressed to them or any of them at the school, or at the usual or

last known place of abode of any of the managers or of their secretary or clerk, except where the managers are a local authority, in which case any notice may be so served on the clerk of the authority.

(4) No summons issued, notice given, or order made for the purpose of carrying into effect the provisions of this Part of this Act shall be invalidated for want of form only.

(5) The Secretary of State may prescribe forms to be used for the purposes of this Part of this Act otherwise than for the purpose of legal proceedings thereunder.

**88. Rules respecting evidence of documents.]**—

(1) The production of the London Gazette containing a notice of the grant, or of the withdrawal or resignation, of a certificate to a certified school shall be sufficient evidence of the fact of a certificate having been duly granted to the school named in the notice, or of the withdrawal or resignation of such a certificate.

(2) The grant of a certificate to a certified school may also be proved by the production of the certificate itself, or of a document purporting to be a copy of the certificate and to be attested as such by the chief inspector of reformatory and industrial schools.

(3) A certificate purporting to be signed by one of the managers of a certified school, or by their secretary or clerk, or by the superintendent or other person in charge of the school, to the effect that the youthful offender or child therein named was duly received into, and is at the date of the signing thereof detained in, the school, or has been otherwise dealt with according to law, shall be evidence of the matters therein stated.

(4) An instrument purporting to be an order of a court under this Part of this Act and to be signed by the members of the court which made the order, or purporting to be a copy of such an order, and to be certified as such a copy by the clerk to that court, shall be evidence of the order.

(5) A copy of rules purporting to be the rules of a certified school, and to be signed by the chief inspector of reformatory and industrial schools, shall be evidence of the rules of that school.

(6) A certificate purporting to be under the hand of the chief inspector or an inspector or assistant inspector of reformatory and industrial schools, stating that any sum due from a parent or other person for the maintenance of a child or young person is overdue and unpaid, shall be evidence of the facts stated therein.

(7) A school to which any youthful offender or child is directed to be sent in pursuance of this Part of this Act shall, until the contrary is proved, be deemed to be a certified school.

**89. Liability to removal.]** The time during which a child is detained in a certified school under this Part of this Act shall for all purposes be excluded in the computation of time mentioned in section one of the Poor Removal Act, 1846 [9 & 10 Vict. c. 66], as amended by any subsequent enactment.

**90. Application to schools under local Acts.]** This Part of this Act shall apply to any reformatory or industrial school established under any local Act passed before the commencement of this Act, subject to the following modifications:—

(1) The superintendent of the school shall be substituted for the chief inspector of reformatory and industrial schools as the person to whom notice of any change of address of a parent or other person against whom a contribution order has been made is to be given:

(2) A certificate purporting to be under the hand of the superintendent or other officer of the school specially authorised by the managers for that purpose, stating that any sum due from a parent or other person for the maintenance of a youthful offender or child is overdue and unpaid, shall be evidence of the facts stated therein.

**91. Tenure of office by certain officers and servants of the London County Council.**—Notwithstanding the repeal by this Act of the Middlesex Industrial Schools Acts the officers and servants appointed under those Acts who became at the passing of the Local Government Act, 1888, officers and servants of the London County Council, and who held office at the passing of this Act, shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not passed, and while performing the same duties shall receive not less salaries or remuneration, and be entitled to not less pensions (if any), than they would have if this Act had not passed.

**92. Application of Part IV.**—The provisions of this Part of this Act with respect to youthful offenders and children detained in certified schools, except such as impose obligations on local authorities with respect to their maintenance, shall apply to youthful offenders and children detained in certified schools at the commencement of this Act in pursuance of any enactment repealed by this Act in like manner as if they were so detained in pursuance of this Act, but nothing in this Act shall affect any obligation undertaken by, or liability imposed on, any local authority before the commencement of this Act with respect to any such youthful offender or child, or prevent any local authority from continuing to make any contribution which they were making before the commencement of this Act.

**93. Provisions as to the Isle of Man and Channel Islands.**—(1) Where, under any law of the Isle of Man or any of the Channel Islands, it is lawful to sentence a young person to be sent to a reformatory or industrial school in Great Britain, and provision is made under any such law to the satisfaction of the Secretary of State—

- (1) For the expenses of the conveyance of such young person to the school to which he is sent, and for his reconveyance on his discharge from such school to the Isle of Man or the Channel Islands as the case may be; and
- (ii) For the expenses of the maintenance of such young person at such school; and
- (iii) For the contribution (if any) to be made by the parent or person legally liable to maintain the child so sent, and the mode in which such contribution is to be raised;

the Government of the Isle of Man, with the assent of the Secretary of State and with the approval of the Tynwald Court, or the Government of any of the Channel Islands, as the case may be, may contract with the managers of any reformatory or industrial school in Great Britain for the reception of young persons sentenced to be sent to any such school by justices or a court in the Isle of Man or the Channel Islands.

(2) A young person sentenced as aforesaid in the Isle of Man or the Channel Islands to be sent to a reformatory or industrial school in Great Britain may be conveyed in the custody of any constable or other person acting under a warrant issued by any competent justices or court in the Isle of Man or the Channel Islands, as the case may be, to the school to which he is sentenced to be sent, and he shall during his conveyance to that school be deemed to be in legal custody, both on sea and on land, and when delivered up to the managers of the school to which he is sent he may thenceforth be dealt with in the same manner and be subject to this Part of this Act in the same way as if he had been sent to such school by a court in the United Kingdom.

(3) In the construction of this section, as respects the Isle of Man, the expression "justices" means two justices or a high bailiff sitting as a court of summary jurisdiction, and the expression "a court" means the court of general gaol delivery, or a judge of the High Court of Justice of the Isle of Man.

In the construction of this Part of this Act for the purposes of this section—

The expressions "youthful offender" and "child" include young persons;

The expressions "court of assize," "court of quarter sessions," "circuit court of

justiciary," "sheriff," mean, as respects the Isle of Man, the court of general gaol delivery, or a judge of the High Court of Justice of the Isle of Man;

The expressions "sentence" and "sentenced" include "order" and "ordered."

## PART V.

### JUVENILE OFFENDERS.

**94. Bail of children and young persons arrested.**—Where a person apparently under the age of sixteen years is apprehended with or without warrant, and cannot be brought forth with before a court of summary jurisdiction, a superintendent or inspector of police, or other officer of police of equal or superior rank, or the officer in charge of the police station to which such person is brought, shall inquire into the case and may in any case, and shall—

- (a) unless the charge is one of homicide or other grave crime; or
- (b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or
- (c) unless the officer has reason to believe that the release of such person would defeat the ends of justice,

release such person on a recognizance, with or without sureties, for such an amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge, being entered into by him or by his parent or guardian.

**95. Custody of children and young persons not discharged on bail after arrest.**—Where a person apparently under the age of sixteen years having been apprehended is not so released as aforesaid, the officer of police shall cause him to be detained in a place of detention provided under this Part of this Act until he can be brought before a court of summary jurisdiction, unless the officer certifies—

- (a) that it is impracticable to do so; or
- (b) that he is of so unruly a character that he cannot be safely so detained; or
- (c) that by reason of his state of health or of his mental or bodily condition it is advisable so to detain him;

and the certificate shall be produced to the court before which the person is brought.

**96. Association with adults, during detention in police stations.**—It shall be the duty of the police authority to make arrangements for preventing, so far as practicable, a child or young person while being detained in a police station from associating with an adult, other than a relative, charged with an offence.

**97. Remand or committal to custody in place of detention.**—(1) A court of summary jurisdiction, on remanding or committing for trial a child or young person who is not released on bail, shall, instead of committing him to prison, commit him to custody in a place of detention provided under this Part of this Act, and named in the commitment, to be there detained for the period for which he is remanded or until he is thence delivered in due court of law:

Provided that in the case of a young person it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot be safely so committed, or that he is of so depraved a character that he is not a fit person to be so detained.

(2) A commitment under this section may be varied or, in the case of a young person who proves to be of so unruly a character that he cannot be safely detained in such custody, or to be of so depraved a character that he is not a fit person to be detained, revoked by any court of summary jurisdiction acting in or for the place in or for which the court which made the order acted, and if it is revoked the young person may be committed to prison.

**98. Attendance at court of parent of child or young person charged with an offence, &c.**—(1) Where a child or young person is charged with any offence, or where a child is brought before a petty sessional court on an application for an

order to send him to a certified industrial school, his parent or guardian may in any case, and shall if he can be found and resides within a reasonable distance and the person so charged or brought before the court is a child, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(2) Where the child or young person is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child or young person, if he can be found, to be warned to attend at the court before which the child or young person will appear.

(3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section twenty-nine of the Summary Jurisdiction Act, 1879 [42 & 43 Vict. c. 49], for applying, with the necessary adaptations and modifications, such of the provisions of the Summary Jurisdiction Acts and the Indictable Offences Act, 1848 [11 & 12 Vict. c. 42], as appear appropriate for the purpose, and such rules may provide for a summons to a child or young person including a summons to his parent or guardian.

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child or young person:

Provided that if that person is not the father, the attendance of the father may also be required.

(5) The attendance of the parent of a child or young person shall not be required under this section in any case where the child or young person was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court of justice.

**99. Power to order parent to pay fine, &c., instead of child or young person.**—(1) Where a child or young person is charged before any court with any offence for the commission of which a fine, damages, or costs may be imposed, and the court is of opinion that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages, or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conducted to the commission of the offence by neglecting to exercise due care of the child or young person.

(2) Where a child or young person is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(3) Where a court of summary jurisdiction thinks that a charge against a child or young person is proved, the court may make an order on the parent or guardian under this section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to the conviction of the child or young person.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(5) Any sums imposed and ordered to be paid by a parent or guardian under this section, or on forfeiture of any such security as aforesaid, may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

(6) A parent or guardian may appeal against an order under this section—

- (a) if made by a court of summary jurisdiction to a court of quarter sessions; and
- (b) if made by a court of assize or a court of quarter sessions to the Court of



Criminal Appeal in accordance with the Criminal Appeal Act, 1907 [7 Edw. 7. c. 23], as if the parent or guardian against whom the order was made had been convicted on indictment, and the order were a sentence passed on his conviction.

**100. Removal of disqualifications attaching to felony.]** The conviction of a child or young person shall not be regarded as a conviction of felony for the purposes of any disqualifications attaching to felony.

**101. Limitation of costs.]** Where a child or young person is himself ordered by a court of summary jurisdiction to pay costs in addition to a fine, the amount of the costs so ordered to be paid shall in no case exceed the amount of the fine, and (except so far as the court may think fit expressly to order otherwise) all fees payable or paid by the informant in excess of the amount of costs so ordered to be paid shall be remitted or repaid to him, and the court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs.

**102. Restrictions on punishment of children and young persons.]—(1)** A child shall not be sentenced to imprisonment or penal servitude for any offence, or committed to prison in default of payment of a fine, damages, or costs.

(2) A young person shall not be sentenced to penal servitude for any offence.

(3) A young person shall not be sentenced to imprisonment for an offence or committed to prison in default of payment of a fine, damages, or costs, unless the court certifies that the young person is of so unruly a character that he cannot be detained in a place of detention provided under this Part of this Act, or that he is of so depraved a character that he is not a fit person to be so detained.

**103. Abolition of death sentence in case of children and young persons.]** Sentence of death shall not be pronounced on or recorded against a child or young person, but in lieu thereof the court shall sentence the child or young person to be detained during His Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and under such conditions as the Secretary of State may direct, and whilst so detained shall be deemed to be in legal custody.

**104. Detention in the case of certain crimes committed by children or young persons.]** Where a child or young person is convicted on indictment of an attempt to murder, or of manslaughter, or of wounding with intent to do grievous bodily harm, and the court is of opinion that no punishment which under the provisions of this Act it is authorised to inflict is sufficient, the court may sentence the offender to be detained for such period as may be specified in the sentence; and where such a sentence is passed the child or young person shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Secretary of State may direct, and whilst so detained shall be deemed to be in legal custody.

**105. Provisions as to discharge of children and young persons detained in accordance with directions of Secretary of State.]—(1)** A person in detention pursuant to the directions of the Secretary of State under the last two foregoing sections of this Act may, at any time, be discharged by the Secretary of State on licence.

(2) A licence may be in such form and may contain such conditions as the Secretary of State may direct.

(3) A licence may at any time be revoked or varied by the Secretary of State, and where a licence has been revoked the person to whom the licence related shall return to such place as the Secretary of State may direct, and if he fails to do so may be apprehended without warrant and taken to that place.

**106. Substitution of custody in place of detention for imprisonment.]** Where a child or young person is convicted of an offence punishable, in

the case of an adult, with penal servitude or imprisonment, or would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or costs, and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may, in lieu of sentencing him to imprisonment or committing him to prison, order that he be committed to custody in a place of detention provided under this Part of this Act and named in the order for such term as may be specified in the order, not exceeding the term for which he might, but for this Part of this Act, be sentenced to imprisonment or committed to prison, nor in any case exceeding one month.

**107. Methods of dealing with children and young persons charged with offences.]** Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other Act enabling the court to deal with the case, the case should be dealt with, namely, whether—

- (a) by dismissing the charge; or
- (b) by discharging the offender on his entering into a recognizance; or
- (c) by so discharging the offender and placing him under the supervision of a probation officer; or
- (d) by committing the offender to the care of a relative or other fit person; or
- (e) by sending the offender to an industrial school; or
- (f) by sending the offender to a reformatory school; or
- (g) by ordering the offender to be whipped; or
- (h) by ordering the offender to pay a fine, damages, or costs; or
- (i) by ordering the parent or guardian of the offender to pay a fine, damages, or costs; or
- (j) by ordering the parent or guardian of the offender to give security for his good behaviour; or
- (k) by committing the offender to custody in a place of detention provided under this Part of this Act; or
- (l) where the offender is a young person, by sentencing him to imprisonment; or
- (m) by dealing with the case in any other manner in which it may be legally dealt with:

Provided that nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section.

**108. Provision of places of detention.]—(1)** It shall be the duty of every police authority to provide such places of detention for every petty sessional division within their district as may be required for the purposes of this Act, either by arranging with the occupiers of any premises whether within or without their district for the use of those premises for the purpose, or by themselves establishing or joining with another police authority in establishing such places; but nothing shall prevent the same place of detention being provided for two or more petty sessional divisions.

(2) If more than one place of detention is provided for any petty sessional division, the police authority may determine that any such place shall be used for some only of the purposes for which places of detention are required to be provided and another place for the other purposes.

(3) Before arranging for the use of any premises as aforesaid the police authority shall satisfy themselves of the fitness of the occupier thereof to have the custody and care of children or young persons committed to, or detained in, custody under this Part of this Act, and of the suitability of the accommodation provided by him.

(4) It shall be lawful for the authority or persons responsible for the management of any institution other than a prison, whether supported out of public funds or by voluntary contributions, but subject in the case of an institution supported out of public funds to the

consent of the Government department concerned, to agree with the police authority for the use of the institution or any part thereof as a place of detention on such terms as may be agreed upon between them and the police authority.

(5) The police authority shall keep a register of the places of detention provided by them for each petty sessional division, and the register shall contain a description of the premises, the names of the occupiers thereof, and the number of children or young persons who may be detained in custody in the several premises, and no child or young person shall be detained in custody in any place which is not so registered.

(6) A copy of the register shall be kept at every court house and police station within the area to which it relates.

(7) The registered occupier of any registered place of detention shall be responsible for the custody of the children and young persons detained in that place, and, if at any time he appears to be unfit or refuses to receive any child or young person committed to custody in that place, or brought to that place for custody until he can be brought before a court of summary jurisdiction, the police authority may remove from the register the premises of which he is the registered occupier.

(8) In selecting the place of detention to which a child or young person is to be committed the court or officer of police shall have regard, where practicable, to the religious persuasion of the child or young person.

(9) Where it is intended to bring a person before a petty sessional court as coming, or as being a person who, if a child, would come, within one of the descriptions mentioned in subsection one of section fifty-eight of this Act, and it is necessary that accommodation should be temporarily provided for him, a place of detention may be used for his accommodation until he can be brought before such a court in like manner as if he had been apprehended.

(10) A police authority shall proceed to exercise the powers conferred on them by this section as soon as may be after the commencement of this Act, but the obligation to provide such places of detention as may be required for the purposes of this Act shall not become operative until the first day of January nineteen hundred and ten.

(11) In the metropolitan police district the powers and duties conferred and imposed on a police authority under this section shall be exercised and performed, as respects London by the London County Council, as respects a county borough by the council of the borough, and elsewhere by the standing joint committee of the county.

(12) The Local Government Board may by order transfer from the Metropolitan Asylums Board to the London County Council any buildings provided by the Metropolitan Asylums Board for the purpose of remand homes under section four of the Youthful Offenders Act, 1901 [1 Edw. 7. c. 20], together with any liabilities incurred by the Metropolitan Asylums Board in connection with such buildings, and on such transfer the buildings shall become places of detention for the purposes of this Part of this Act, and the order may also provide for the transfer of any officers employed by the Metropolitan Asylums Board in connection with such remand homes, and for securing to such officers any rights as to pension or otherwise which they may be entitled to.

**109. Provisions as to custody of children and young persons in places of detention.]—(1)** The order or judgment in pursuance of which a child or young person is committed to custody in a place of detention provided under this Part of this Act shall be delivered with the child or young person to the person in charge of the place of detention and shall be a sufficient authority for his detention in that place in accordance with the tenor thereof.

(2) A child or young person whilst so detained and whilst being conveyed to and from the place of detention shall be deemed to be in legal custody, and if he escapes may be apprehended without warrant and brought back to the place of detention in which he was detained.



(3) The Secretary of State shall cause places of detention provided under this Part of this Act to be inspected, and may make rules as to the places to be used as places of detention, and as to their inspection, and as to the classification, treatment, employment and control of children and young persons detained in custody in a place of detention provided under this Part of this Act, and for the children and young persons whilst so detained being visited from time to time by persons appointed in accordance with those rules.

**110. Expenses of maintenance of child or young person.**—(1) The expenses incurred by the police authority in respect of any place of detention provided by the authority, including the expenses of the maintenance of any child or young person detained therein, whether detained on apprehension or committed to custody on remand or commitment for trial or in lieu of imprisonment or in default of payment of a fine, damages, or costs, shall be defrayed out of the police fund of the police authority by which the place is provided.

(2) There shall be paid, out of money provided by Parliament, towards the cost of maintaining any child or young person so committed to custody on remand or commitment for trial or in lieu of imprisonment or in default of payment of a fine, damages, or costs, such contributions as may be fixed by regulations made by the Secretary of State with the approval of the Treasury, and the sums so paid shall be applied in repayment of the sums paid out of the police fund in respect of that child or young person.

(3) This section shall apply as respects the metropolitan police district with the substitution of references to the London County Council, the standing joint committee of a county, or the council of a county borough for references to the police authority, and of references to the county fund or the borough fund or borough rate for references to the police fund.

**111. Juvenile courts.**—(1) A court of summary jurisdiction when hearing charges against children or young persons, or when hearing applications for orders or licences relating to a child or young person at which the attendance of the child or young person is required, shall, unless the child or young person is charged jointly with any other person not being a child or young person, sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held, and a court of summary jurisdiction so sitting is in this Act referred to as a juvenile court.

(2) Where in the course of any proceedings in a juvenile court it appears to the court that the person charged or to whom the proceedings relate is of the age of sixteen years or upwards, or where in the course of any proceedings in any court of summary jurisdiction other than a juvenile court it appears that the person charged or to whom the proceedings relate is under the age of sixteen years, nothing in this section shall be construed as preventing the court if it thinks it undesirable to adjourn the case from proceeding with the hearing and determination of the case.

(3) Provision shall be made for preventing persons apparently under the age of sixteen years whilst being conveyed to or from court, or whilst waiting before or after their attendance in court, from associating with adults charged with any offence other than an offence with which the person apparently under the age of sixteen years is jointly charged.

(4) In a juvenile court no person other than the members and officers of the court and the parties to the case, their solicitors and counsel, and other persons directly concerned in the case, shall, except by leave of the court, be allowed to attend:

Provided that *bonâ fide* representatives of a newspaper or news agency shall not be excluded.

(5) His Majesty may by Order in Council under the Metropolitan Police Courts Acts, 1839 and 1840 [2 and 3 Vict. c. 47; 3 and 4 Vict. c. 84], provide for the establishment of one or more separate juvenile courts for the metropolitan police court district and for assigning as a division to each such court such portion of that district as may be specified in the order, and where such an order is made the London County Council

shall, if so required by the Secretary of State, provide the necessary accommodation for the purpose at any place of detention provided by the Council upon such terms as to payment and otherwise as may be agreed between the Secretary of State and the Council, or, in default of agreement, as may be settled by the Treasury.

(6) Where it is proved to the satisfaction of the Secretary of State that arrangements cannot be made for the purpose of complying with this section in any place by the first day of April, nineteen hundred and nine, the Secretary of State may by order postpone the coming into operation of this section as respects that place until such date, not later than the first day of January, nineteen hundred and ten, as may be specified in the order.

**112. Temporary saving of power to imprison children and young persons.** The provisions of this Part of this Act prohibiting or restricting a child or young person from being committed to prison on remand or commitment for trial or in default of payment of a fine, damages, or costs, or being sentenced to imprisonment shall not come into operation until the first day of January nineteen hundred and ten, but nothing in this provision shall be construed as preventing the court from committing or sentencing a child or young person to custody in a place of detention before that date in any case where a place of detention has been provided.

**113. Saving for pending proceedings.** This Part of this Act shall not apply in the case of any proceedings instituted before the first day of April nineteen hundred and nine.

## PART VI.

### MISCELLANEOUS AND GENERAL.

#### Miscellaneous.

**114. Power to clear court whilst child or young person is giving evidence in certain cases.** In addition and without prejudice to any powers which a court may possess to hear proceedings in camera the court may, where a person who, in the opinion of the court, is a child or young person is called as a witness in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, direct that all or any persons, not being members or officers of the court or parties to their case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the child or young person: Provided that nothing in this section shall authorise the exclusion of *bonâ fide* representatives of a newspaper or news agency.

**115. Prohibition on children being present in court during the trial of other persons.** No child (other than an infant in arms) shall be permitted to be present in court during the trial of any person charged with an offence, or during any proceedings preliminary thereto, and if so present he shall be ordered to be removed, unless he is the person charged with the alleged offence, or during such time as his presence is required as a witness or otherwise for the purposes of justice:

Provided that this section shall not apply to messengers, clerks, and other persons required to attend at any court for purposes connected with their employment.

**116. Prohibition of purchase of old metals from persons under sixteen.**—(1) If a dealer in old metal as defined by the Prevention of Crimes Act, 1871 [34 & 35 Vict. c. 112], or a marine store dealer within the meaning of Part IX. of the Merchant Shipping Act, 1894 [57 & 58 Vict. c. 60], purchases from any person apparently under the age of sixteen years any old metal, whether offered for sale by that person on his own behalf or on behalf of any other person, he shall be liable on summary conviction to a fine not exceeding five pounds.

(2) For the purposes of this section "old metal" includes scrap metal, broken metal, or partly manufactured metal goods, and old or defaced metal goods.

**117. Prohibition against taking pawns from persons under fourteen.**—(1) If a pawnbroker takes an article in pawn from any person apparently under the age of fourteen years, whether offered

by that person on his own behalf or on behalf of any other person, he shall be guilty of an offence against the Pawnbrokers Act, 1872 [35 & 36 Vict. c. 93], but nothing in that Act nor in this section shall affect section fifty of the Metropolitan Police Act, 1839 [2 & 3 Vict. c. 47].

**118. Penalty on vagrants preventing children receiving education.**—(1) If a person habitually wanders from place to place and taken with him any child above the age of five, he shall, unless he proves that the child is totally exempted from school attendance or that the child is not by being so taken with him, prevented from receiving efficient elementary education, be liable on summary conviction to a fine not exceeding with costs twenty shillings, and shall, for the purposes of the provisions of this Act relating to the descriptions of children who may be sent to a certified industrial school, be deemed not to be exercising proper guardianship over the child:

Provided that this provision shall not apply to a child in a canal boat for whose education provision is made under the Canal Boats Act, 1877 [40 & 41 Vict. c. 60], as amended by any subsequent enactment.

(2) Any constable who finds a person wandering from place to place and taking a child with him may, if he has reasonable ground for believing that the person is guilty of an offence under this section, apprehend him without a warrant, and may take the child to a place of safety in accordance with the provisions of Part II. of this Act, and that Part shall apply accordingly as if an offence under this section were an offence under that Part.

(3) Without prejudice to the requirements of the Education Acts, 1870 to 1907, as to school attendance or to proceedings thereunder, this section shall not apply during the months of April to September, inclusive, to any child whose parent or guardian is engaged in a trade or business of such a nature as to require him to travel from place to place, and who has obtained a certificate of having made not less than two hundred attendances at a public elementary school during the months of October to March immediately preceding, and the power of the Board of Education to make regulations with respect to the issue of certificates of due attendance for the purposes of the Education Acts, 1870 to 1907, shall include a power to make regulations as to the issue of certificates of attendance for the purposes of this section.

**119. Penalty on giving intoxicating liquor to children.** If any person gives, or causes to be given, to any child under the age of five any intoxicating liquor, except upon the order of a duly qualified medical practitioner, or in case of sickness, or apprehended sickness, or other urgent cause, he shall, on summary conviction, be liable to a fine not exceeding three pounds.

**120. Exclusion of children from bars of licensed premises.**—(1) The holder of the licence of any licensed premises shall not allow a child to be at any time in the bar of the licensed premises, except during the hours of closing.

(2) If the holder of a licence acts in contravention of this section, or if any person causes or procures, or attempts to cause or procure, any child to go to or to be in the bar of any licensed premises except during the hours of closing, he shall be liable, on summary conviction, to a fine not exceeding, in respect of the first offence, forty shillings, and in respect of any subsequent offence, five pounds.

(3) If a child is found in the bar of any licensed premises, except during the hours of closing, the holder of the licence shall be deemed to have committed an offence under this section unless he shows that he has used due diligence to prevent the child being admitted to the bar or that the child was apparently a person over the age of fourteen.

(4) Nothing in this section shall apply in the case of any child of the licence-holder or in the case of a child who is resident but not employed in the licensed premises or who is in the bar of licensed premises solely for the purpose of passing through in order to obtain access to, or egress from, some other part of the premises, not being

a bar, where there is no other convenient means of access to, or egress from, that part of the premises, or in the case of railway refreshment rooms or other premises constructed, fitted, and intended to be used in good faith for any purpose to which the holding of a licence is merely auxiliary.

(5) In this section the bar of licensed premises means any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor, and the expressions "licence" and "licensed premises" have the same meaning as in the Licensing Acts, 1828 to 1906.

**121. Safety of children at entertainments.**—(1) Where an entertainment for children or any entertainment at which the majority of the persons attending are children is provided, and the number of children who attend the entertainment exceeds one hundred, and access to any part of the building in which children are accommodated is by stairs, it shall be the duty of the person who provides the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to any such part of the building than that part can properly accommodate, and to control the movement of the children and other persons admitted to any such part whilst entering and leaving, and to take all other reasonable precautions for the safety of the children.

(2) Where the occupier of a building permits, for hire or reward, the building to be used for the purpose of an entertainment, he shall take all reasonable steps to secure the observance of the provisions of this section.

(3) If any person, on whom any obligation is imposed by this section, fails to fulfil that obligation, he shall be liable, on summary conviction, to a fine not exceeding, in the case of a first offence, fifty pounds, and in the case of a second or subsequent offence, one hundred pounds, and also, if the building in which the entertainment is given is licensed under any of the enactments relating to the licensing of theatres and of houses and other places for music or dancing, the licence shall be liable to be revoked by the authority by which the licence was granted.

(4) A constable may enter any building in which he has reason to believe that such an entertainment as aforesaid is being, or is about to be, provided with a view to seeing whether the provisions of this section are carried into effect.

(5) It shall be the duty of the council of the county or county borough in which a building in which any contravention of the provisions of this section is alleged to have taken place to institute proceedings under this section if the building is a building licensed by the Lord Chamberlain, or is licensed by the council of the county or county borough under the enactments relating to the licensing of theatres or of houses and other places for music or dancing, and in any other case it shall be the duty of the police authority to institute such proceedings.

(6) This section shall not apply to any entertainment given in a private dwelling-house.

**122. Cleansing of verminous children.**—(1) A local education authority may direct their medical officer, or any person provided with and, if required, exhibiting the authority in writing of their medical officer, to examine in any public elementary school provided or maintained by the authority the person and clothing of any child attending the school, and, if on examination the medical officer, or any such authorised person as aforesaid, is of opinion that the person or clothing of any such child is infected with vermin or is in a foul or filthy condition, the local education authority may give notice in writing to the parent or guardian of, or other person liable to maintain, the child, requiring him to cleanse properly the person and clothing of the child within twenty-four hours after the receipt of the notice.

(2) If the person to whom any such notice as aforesaid is given fails to comply therewith within such twenty-four hours, the medical

officer, or some person provided with and, if required, exhibiting the authority in writing of the medical officer, may remove the child referred to in the notice from any such school, and may cause the person and clothing of the child to be properly cleansed in suitable premises and with suitable appliances, and may, if necessary for that purpose, without any warrant other than this section, convey to such premises and there detain the child until the cleansing is effected.

(3) Where any sanitary authority within the district of a local education authority have provided, or are entitled to the use of, any premises or appliances for cleansing the person or clothing of persons infested with vermin, the sanitary authority shall, if so required by the local education authority, allow the local education authority to use such premises and appliances for the purpose of this section upon such payment (if any) as may be agreed between them, or, in default of agreement, settled by the Local Government Board.

(4) Where, after the person or clothing of a child has been cleansed by a local education authority under this section, the parent or guardian of, or other person liable to maintain, the child allows him to get into such a condition that it is again necessary to proceed under this section, the parent, guardian, or other person shall, on summary conviction, be liable to a fine not exceeding ten shillings.

(5) Where a local education authority give notice under this section to the parent or guardian of, or other person liable to maintain, a child, requiring him to cleanse the person and clothing of the child, the authority shall also furnish him with written instructions describing the manner in which the cleansing may best be effected.

(6) The examination and cleansing of girls under this section shall only be effected by a duly qualified medical practitioner or by a woman duly authorised as herein before provided.

(7) For the purposes of this section "medical officer" means any officer appointed for the purpose of section thirteen of the Education (Administrative Provisions) Act, 1907 [7 Edw. 7 c. 43.]

#### General.

**123. Presumption and determination of age.**—

(1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it is of the age of sixteen years or upwards, that person shall for the purposes of this Act be deemed not to be a child or a young person.

(2) Where in a charge or indictment for an offence under this Act, or any of the offences mentioned in the First Schedule to this Act, except an offence under the Criminal Law Amendment Act, 1895, it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or above any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or above the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to have been under or above that age, as the case may be, unless the contrary is proved.

(3) Where in any charge or indictment for an offence under this Act or any of the offences mentioned in the First Schedule to this Act it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove

that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

(4) Where a person is charged with an offence under this Act in respect of a person apparently under a specified age it shall be a defence to prove that the person was actually of or over that age.

**124. Evidence of wages of defendant.** In any proceedings under this Act a copy of an entry in the wages book of any employer of labour, or, if no wages book be kept, a written statement signed by the employer, or by any responsible person in his employ, shall be *prima facie* evidence that the wages therein entered, or stated as having been paid to any person, have in fact been so paid.

**125. Provision as to contribution orders.** The persons liable to maintain a youthful offender, young person, or child, against whom an order to contribute to the maintenance of the youthful offender, young persons, or child may be made under this Act shall include his step-parent, and, if the court having cognizance of the case thinks fit, a person cohabiting with his mother, whether or not the person so cohabiting is his putative father, and in the case of illegitimacy his putative father:

Provided that where the youthful offender, young person, or child is illegitimate and an affiliation order for his maintenance has previously been made on the application of his mother under the enactments relating to bastardy, the court shall not (unless in view of the special circumstances of the case the court thinks it desirable) make an order for contribution against the putative father, but may order the whole or any part of the payments accruing due under the affiliation order to be made to the chief inspector of reformatory and industrial schools or such other person as may be named in the order, to be applied by him towards the maintenance of the youthful offender, young person, or child.

**126. Reception and maintenance of children and young persons in workhouses.** Boards of Guardians shall provide for the reception of children and young persons brought to a workhouse in pursuance of this Act, and, where the place to which under this Act a child or young person is authorised to be taken is a workhouse, the master shall receive the child or young person into the workhouse if there is suitable accommodation therein, and any expenses incurred in respect of the child or young person shall be paid out of the common fund.

**127. Variation of trusts for maintenance of child or young person.**—(1) Where a child or young person is by an order of any court made under this Act removed from the care of any person, and that person is entitled under any trust to receive any sum of money in respect of the maintenance of the child or young person, the court may order the whole or any part of the sums so payable under the trust to be paid to the person to whose care the child or young person is committed, to be applied by that person for the benefit of the child or young person in such manner as, having regard to the terms of the trust, the court may direct.

(2) An appeal shall lie from an order of a court of summary jurisdiction under this section to quarter sessions.

**128. Amendment of 43 & 43 Vict. c. 49.**—(1) In the definitions of "child" and "young person" in the Summary Jurisdiction Act, 1879, "fourteen years" shall be substituted for "twelve years."

(2) The First Schedule to the Summary Jurisdiction Act, 1879, shall include the offence mentioned in the Second Schedule to this Act in the same manner as if that schedule formed part of the First Schedule to the Summary Jurisdiction Act, 1879:

Provided that where a court of summary jurisdiction deals with such an offence summarily under section twelve of that Act the maximum



term of imprisonment which the court may inflict shall be six instead of three months.

**129. Application of Summary Jurisdiction Acts]** All orders of a court of summary jurisdiction, whether a petty sessional court or not, under this Act shall be made, and all proceedings in relation to any such orders shall be taken, in manner provided by the Summary Jurisdiction Acts, and the power of making rules under section twenty-nine of the Summary Jurisdiction Act, 1879, shall extend to making rules for regulating the procedure of courts of summary jurisdiction under this Act and matters incidental thereto.

**130. Variation of Orders in Council]** An Order in Council under this Act may be revoked or varied by any subsequent Order in Council.

**131. General definitions]** For the purposes of this Act unless the context otherwise requires—

The expression "child" means a person under the age of fourteen years;

The expression "young person" means a person who is fourteen years of age or upwards and under the age of sixteen years;

The expression "guardian," in relation to a child, young person, or youthful offender, includes any person who, in the opinion of the court having cognizance of any case in relation to the child, young person, or youthful offender, or in which the child, young person, or youthful offender is concerned, has for the time being the charge of or control over the child, young person, or youthful offender;

The expression "legal guardian," in relation to an infant, child, young person, or youthful offender, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction;

The expression "place of safety" means any workhouse or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive an infant, child, or young person;

The expression "common council" means the mayor, aldermen, and commons of the City of London in common council assembled;

The expression "local education authority" means a local education authority for the purpose of Part III. of the Education Act, 1902;

The expressions "police authority" and "police fund" as respects the City of London mean the Common Council and the fund out of which the expenses of the City police are defrayed, and elsewhere have the same meanings as in the Police Act, 1890;

The expression "common fund" means, as respects a poor law union consisting of a single parish, the poor rate of that parish;

The expression "street" includes any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not;

The expression "public place" includes any public park, garden, sea beach, or railway station, and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise;

The expression "intoxicating liquor" means any fermented, distilled, or spirituous

liquor which cannot according to any law for the time being in force be legally sold without a licence from the Commissioners of Inland Revenue.

**132. Application to Scotland]** This Act in its application to Scotland shall be subject to the following modifications:—

- (1) The Secretary for Scotland shall, in this Act and any local Act relating to reformatory or industrial schools in Scotland, be substituted for the Secretary of State, but this substitution shall not apply to the provision of this Act conferring powers to appoint a chief inspector and other inspectors of reformatory and industrial schools, unless and until any such powers are transferred to the Secretary for Scotland by order of the Secretary of State, which he is hereby empowered to make with the concurrence of the Treasury and the Secretary for Scotland, and upon any such order being made such powers shall to the extent specified in the order be transferred to and may be exercised by the Secretary for Scotland;
- (2) The Local Government Board for Scotland shall be substituted for the Local Government Board and shall, for the purposes of Part I. of this Act, have the same powers of making inquiries, calling for returns, and applying to the Court of Session as they have for the purposes of the Poor Law (Scotland) Act, 1845 [8 & 9 Vict. c. 83];
- (3) The Scotch Education Department shall be substituted for the Board of Education;
- (4) The High Court of Justiciary shall be substituted for a court of assize;
- (5) The procurator fiscal shall be substituted for the coroner, and an inquiry by him into the cause of death for an inquest;
- (6) The poorhouse and the person in charge thereof shall be substituted for the workhouse and the master thereof;
- (7) Parish council shall be substituted for board of guardians and for guardians of a poor law union;
- (8) Poor rate shall be substituted for common fund and for common fund of a union;

Provided that where under this Act expenses incurred in respect of a child or young person brought to a poorhouse are payable out of the common fund, such expenses shall form part of the establishment charges of the poorhouse;

- (9) The expressions "court of summary jurisdiction" and "petty sessional court" in Part I. and Part II. and in sub-section seven of section seventy-four of this Act mean the sheriff, and elsewhere mean the sheriff or any two or more justices of the peace or any magistrate or magistrates, by whatever name called, officiating under the provisions of any general or local police Act (provided that, where under any local Act a magistrate had jurisdiction before the commencement of this Act for any purposes of the Prevention of Cruelty to Children Act, 1904 [4 Edw. 7, c. 15], he shall have jurisdiction for the like purposes of Part II. of this Act), and the expression "justice" occurring in this Act in reference to one justice of the peace includes the sheriff and any such magistrate;
- (10) "Misdemeanour" means crime and offence; "manslaughter" means cul-

pable homicide; "affiliation order" means decree for aliment; "attached" means arrested; "information" and "summons" means complaint or indictment, as the case may be; "local education authority" means school board; "elementary education" means education; "London Gazette" means "Edinburgh Gazette"; and in the definition of the expression "street" the word "passage" includes common close, or common stair, or common passage;

- (11) The expression "in accordance with the byelaws in force in the place where he resides" means "in such regular manner as is specified in the licence";
- (12) The expression "a justice having jurisdiction in the place where the court which made the order sat" and any similar expression means "the court which made the order or any member thereof or any other court having jurisdiction in the place where the court which made the order sat";
- (13) References to an informant, to a petty sessional division, to an appeal to a court of quarter sessions or to the Court of Criminal Appeal, and to the enactments relating to bastardy shall not apply: Provided that in sub-section four of section seventy-four the expression "court of quarter sessions" means the sheriff sitting with a jury;
- (14) References to a remand or to remanding a person shall be construed as references to an adjournment of the proceedings and to an order of the court respecting the detention in custody of a person during any such adjournment, and references to release on recognizance shall be construed as references to liberation on bail, or liberation without bail, on a verbal obligation to appear at any diet or court, or liberation on bond of caution, as the case may require;
- (15) The expression "by distress" means under a warrant of poinding and sale;
- (16) The expressions "police authority" and "police fund" have the same meanings as in the Police (Scotland) Act, 1890 [53 & 54 Vict. c. 67]: Provided that, in the case of a royal, parliamentary, or police burgh, the expression "police authority," where occurring in section fifty-eight and in section one hundred and twenty-one of this Act, means the town council; and provided further that, where in any such burgh expenses chargeable to the police fund or as part of the current expenses of a police authority would, under the existing law, be payable out of the burgh general assessment, expenses so chargeable under the provisions of this Act shall be defrayed as expenses incurred by a town council under section seventy-four of this Act;
- (17) References to the computation of time mentioned in the Poor Removal Act, 1846 [9 & 10 Vict. c. 66], shall be construed as references to any computation of time for the purpose of ascertaining the settlement of any pauper; references to the Education Acts, 1870 to 1907, and references to the Education (Administrative Provisions) Act, 1907 [7 Edw. 7, c. 43], and to any section thereof, as references to the Education (Scotland) Acts, 1872 to 1893, and any Act amending the same; and references to section twenty-nine of the Summary Jurisdiction Act, 1879 [42 & 43 Vict. c. 49], as references to section



thirty-three of the Summary Procedure (Scotland) Act, 1864 [27 & 28 Vict. c. 53], and references in section one hundred and nineteen and section one hundred and twenty to a licence, to licensed premises, and to intoxicating liquor, respectively, as references to a certificate, to certificated premises, and to excisable liquor, within the meaning of the Licensing (Scotland) Act, 1903 [3 Edw. 7. c. 25].

- (18) A reference to the Elementary Education Act, 1876 [39 & 40 Vict. c. 79], and to section twelve thereof shall be construed as a reference to the Education (Scotland) Act, 1883 [46 & 47 Vict. c. 56], and to section nine thereof, or to the Day Industrial Schools (Scotland) Act, 1893 [56 & 57 Vict. c. 12], and to section four thereof, or to any Act and section amending the same respectively, as the case may be; provided that the words "public or inspected school" shall be substituted for the words "certified efficient school within the meaning of the Elementary Education Act, 1876":
- (19) Every offence committed against this Act shall, except where inconsistent with the provisions of this Act, be tried and determined under the provisions of the Summary Jurisdiction (Scotland) Acts, and, in the event of an offender being convicted and failing to make payment of the penalty which may have been imposed immediately or within a specified period, he shall, except as aforesaid, be liable to imprisonment in accordance with the provisions of the said Acts:
- (20) A parish council may, with the approval of the Local Government Board for Scotland (and so long as that approval is not withdrawn), subscribe to the funds of an association or society for the prevention of cruelty to children:
- (21) In section seventy-four of this Act the expression "county borough" means a burgh or police burgh within the meaning of the Local Government (Scotland) Act, 1889 [52 & 53 Vict. c. 50], which has or is entitled to have a separate police force, and all other burghs and police burghs shall for the purposes of the said section be held to be within the county.

The expenses incurred by a county council under the said section shall be defrayed out of the general purposes rate: Provided that, notwithstanding anything contained in the Local Government (Scotland) Act, 1889 [52 & 53 Vict. c. 50], the ratepayers of a police burgh having or entitled to have a separate police force shall not be assessed by the county council for any such expenses, and provided further that, with respect to every burgh within the meaning of the Local Government (Scotland) Act, 1889, which has not and is not entitled to have a separate police force, subsection three and subsection four of section sixty and section sixty-six of the last-mentioned Act shall so far as applicable have effect as if such expenses were expenditure therein mentioned; the expenses incurred by a town council shall be defrayed out of the burgh general improvement assessment, or any other assessment leviable in equal proportions on owners and occupiers, but shall not be reckoned in any calculation as to the statutory limit of any such assessment; and the expenses incurred by a school board shall be paid out of the school rate or school fund.

A local authority may borrow for

the purposes authorised in the said section on the security of the said respective assessments or rates, if a county council, under and in accordance with the provisions of the Local Government (Scotland) Act, 1889 [52 & 53 Vict. c. 50], and any Act amending the same; if a town council, under and in accordance with the provisions of section three hundred and seventy-four of the Burgh Police (Scotland) Act, 1892 [55 & 56 Vict. c. 55], as amended by any subsequent Act, or of the corresponding provision of any local police Act; and if a school board, under and in accordance with the provisions of the Education (Scotland) Acts, 1872 to 1893, and any Act amending the same; and subsection fourteen of the said section of this Act shall apply accordingly, with the substitution of the Acts hereinbefore mentioned for the Acts in that subsection mentioned: Provided that the period within which the money so borrowed is to be repaid shall be such period not exceeding sixty years as the Secretary for Scotland, or in the case of a school board the Scotch Education Department, shall sanction.

A local authority may acquire land for the purposes authorised in the said section of this Act as a local authority under the Public Health (Scotland) Act, 1897 [60 & 61 Vict. c. 36], may acquire land for the purposes of that Act, and subsection twelve of the said section of this Act shall apply accordingly, with the substitution of the Public Health (Scotland) Act, 1897, for the Acts in that subsection mentioned:

- (22) In addition to any other register required by law, a separate register of convicted juvenile offenders and of juvenile offenders discharged on recognizance or put on probation under the Probation of Offenders Act, 1907 [7 Edw. 7. c. 17], shall be kept for every summary court by the chief constable or other person charged with the duty of keeping registers of convictions. The register shall apply to offenders of such age, and shall include such particulars, as may be directed by the Secretary for Scotland, and it shall be the duty of the keeper of the register, within seven days after any such offender has been dealt with by the court, to transmit a copy of the entry relating to the offender to the clerk of the school for the burgh or parish in which the offender resides:
- (23) Subsection two of section nine, section twenty-eight, section twenty-nine, section thirty, section thirty-five, section thirty-six, subsection thirteen of section seventy-four, and subsection three of section eighty-two of this Act shall not apply to Scotland:
- (24) Subject to the provisions hereinafter contained, nothing in this Act shall be construed to repeal, alter, prejudice, or affect any of the provisions of the Glasgow Juvenile Delinquency Prevention and Repression Acts, 1878 and 1896 (hereinafter referred to as the Glasgow Acts) [41 & 42 Vict. c. cxi. 59 & 60 Vict. c. xxxv.], and the Commissioners and the directors acting under the Glasgow Acts shall continue to have the full rights, privileges, and powers at present competent to them: Provided, nevertheless, that the Secretary for Scotland may, by order under his hand, provide for altering, amending, or adapting the Glasgow Acts so as to provide (a) for the retirement of the existing directors, for the re-constitution of

the board of directors, for the election of new directors, for subsequent elections of directors, for the annual retiral of one-third or other proportion of the directors, and for supplying vacancies arising from time to time; (b) for the assessments authorised to be levied under the Glasgow Acts being levied in the same manner as assessments for the expenses of a town council for the purposes of section seventy-four of this Act instead of as in the Glasgow Acts provided, and for the reduction of the maximum amount thereof, if though proper, and for the application of the said assessments; (c) for authorising the said directors to grant securities over all lands and heritages vested in them, including school houses; (d) for raising the age up to which, under the Glasgow Acts, a child may, upon the request of the school board, if the court think it expedient, be sent to a certified day industrial school from thirteen years to fourteen years, and for providing that any order for payment of contributions by a parent under the Glasgow Acts shall be enforceable as a decree for aliment; and (e) for otherwise altering, amending, or adapting the provisions of the Glasgow Acts, as may seem to him necessary to make those provisions conform with the provisions of this Act, or to enable the powers under the Glasgow Acts to be exercised as if they were powers under this Act. Any such order may be revoked and varied by a subsequent order:

- (25) The immediately preceding subsection shall apply to the Aberdeen Reformatories and Industrial Schools Act, 1885 [48 & 49 Vict. c. clxxxii.], as if it were herein re-enacted with the omission of the portions thereof under the headings (b), (c), and (d), and with the substitution of the last-mentioned Act for the Glasgow Acts.

133. *Application to Ireland.*] This Act in its application to Ireland shall be subject to the following modifications:—

- (1) The Chief Secretary shall be substituted for the Secretary of State:
- (2) The Dublin Gazette shall be substituted for the London Gazette:
- (3) For references to Orders in Council by His Majesty there shall be substituted references to Orders in Council by the Lord Lieutenant:
- (4) The powers which may be exercised by His Majesty may be exercised as to Ireland by the Lord Lieutenant:
- (5) A court of summary jurisdiction constituted in accordance with the provisions of section two hundred and forty-nine of the Public Health (Ireland) Act, 1878 [41 & 42 Vict. c. 52], shall be substituted for a petty sessions court;
- (6) Section five of the Summary Jurisdiction over Children (Ireland) Act, 1884 [47 & 48 Vict. c. 19], which gives power to deal summarily with young persons by consent, shall extend to all indictable offences other than homicide, and accordingly in that section for the words "specified in the schedule to this Act" there shall be substituted the words "other than homicide":
- (7) References to the Summary Jurisdiction Act, 1879 [42 & 43 Vict. c. 49], shall, save as otherwise provided in this subsection, be construed as references to the Summary Jurisdiction over Children (Ireland) Act, 1884 [47 & 48

Vict. c. 19], and the reference to section ten of the first-mentioned Act shall be construed as a reference to section four of the last-mentioned Act.

The reference to the provisions of the first-mentioned Act with respect to recognizances to be of good behaviour shall be construed as a reference to the provisions of the Petty Sessions (Ireland) Act, 1851 [14 & 15 Vict. c. 93], with respect to recognizances to keep the peace.

The reference to the First Schedule of the first-mentioned Act shall not apply.

For the provisions of this Act giving power to make rules under the first-mentioned Act the following provision shall be substituted:—

"The Lord Chancellor of Ireland may make rules regulating the procedure of courts of summary jurisdiction under this Act, and other matters incidental thereto, and all rules so made shall be laid as soon as may be before both Houses of Parliament":

- (8) The Dublin Act, 1859 [22 & 23 Vict. c. 52], shall be substituted for the Metropolitan Police Courts Acts, 1839 and 1840 [2 & 3 Vict. c. 71; 3 & 4 Vict. c. 84]:
- (9) The Union Officers (Ireland) Superannuation Acts, 1865 and 1872, shall be substituted for the Superannuation (Metropolis) Act, 1866 [29 & 30 Vict. c. 31]:
- (10) For references to the Indictable Offences Act, 1848 [11 & 12 Vict. c. 42], there shall be substituted references to the Petty Sessions (Ireland) Act, 1851 [14 & 15 Vict. c. 93], and for references to particular provisions of the first-mentioned Act there shall be substituted references to the corresponding provisions of the last-mentioned Act:
- (11) The prohibition of the purchase of old metal from children and young persons shall not apply:
- (12) For the prohibition against taking any pawns from children the following provision shall be substituted:—

"If a pawnbroker takes an article in pawn from any person apparently under the age of fourteen years, he shall be liable on summary conviction to a fine not exceeding ten pounds, with the right of appeal in the manner provided by the Summary Jurisdiction Acts irrespective of the amount of the fine":
- (13) Inspector of Reformatory and Industrial Schools in Ireland shall be substituted for Chief Inspector and Chief Inspector of Reformatory and Industrial Schools respectively, and Assistant Inspector of Reformatory and Industrial Schools in Ireland shall be substituted for Assistant Inspector:
- (14) In relation to a board of guardians "funds of the union" shall be substituted for "common fund":
- (15) Any reference to the Poor Removal Act, 1846 [9 & 10 Vict. c. 66], to the Poor Law Act, 1878 [42 & 43 Vict. c. 54], to the Canal Boats Act, 1877 [40 & 41 Vict. c. 60], or to an order of affiliation shall not apply:
- (16) Any reference to the Criminal Appeal

Act, 1907 [7 Edw. 7, c. 23], or to an appeal to the Court of Criminal Appeal shall not apply:

- (17) The provisions of this Act relating to children liable to be sent to industrial schools shall extend and apply to any child who is found destitute, being an orphan:
- (18) In the application of the provisions of Part IV. of this Act relating to the sending, removal, and transfer, respectively, of a youthful offender or child to and from a certified school, the following provision shall apply:

"Provided that a youthful offender or child who appears to belong to the Roman Catholic Church shall not be ordered to be sent, removed, or transferred to any school save to a certified school conducted in accordance with the doctrines of that church, and a youthful offender or child who does not appear to belong to the Roman Catholic Church shall not be ordered to be sent, removed, or transferred to any school conducted in accordance with the doctrines of that church:

For the purposes of this section the youthful offender or child shall be deemed to belong to the religious persuasion to which his parents belong, and, in all cases where his parents do not belong to the same religious persuasion, or where the religious persuasion of his parents is unknown, the youthful offender or child shall be deemed to belong to the religious persuasion in which he appears to have been baptized or, that not appearing, to which he professes to belong":

- (19) The local authority for the purposes of Part IV. of this Act shall be the council of any county and the council of any county borough, both as respects a reformatory and as respects an industrial school, and the expenses incurred by a local authority under Part IV. of this Act shall be defrayed in the case of a county council out of the county fund, as a county at large charge, and in the case of a county borough council out of any rate or fund applicable to the purposes of the Public Health (Ireland) Acts, 1878 to 1907, as if incurred for sanitary purposes, or out of any other rate or fund which the Local Government Board for Ireland may on the application of the council approve, and land may be acquired by a local authority for the purposes of Part IV. of this Act as for the purposes of the Local Government (Ireland) Act, 1898 [61 & 62 Vict. c. 37], and the borrowing powers conferred on local authorities by Part IV. of this Act may be exercised, both as respects a reformatory and as respects an industrial school, in the case of a county council under the Local Government (Ireland) Act, 1898 [61 & 62 Vict. c. 37], and in the case of a county borough council under the Public Health (Ireland) Acts, 1878 to 1907:
- (20) For the provisions of this Act relating to the enforcement of an attendance order the following provision shall be substituted: "A court of summary jurisdiction constituted in accordance with the provisions of the Irish Education Act, 1892 [55 & 56 Vict. c. 42], may, if it thinks fit, on complaint of a school attendance committee made under section four of that Act for the purpose of enforcing an attendance order, order a child to be sent to a certified day industrial school, or, if it

appears to the court that there is no such school suitable for the child, to a certified industrial school, either in addition to or without inflicting any fine under that section," and references in this Act to a "local education authority," where they occur in relation to day industrial schools or in relation to children sent to industrial schools at the instance of a local education authority, shall be construed as references to the school attendance committee appointed under the Irish Education Act, 1892 [55 & 56 Vict. c. 42], and the expression "area of any local education authority" shall mean any place to which that Act applies, and the expenses incurred and moneys received by a school attendance committee under this Act shall be defrayed and applied in like manner as expenses incurred and moneys received by that committee under that Act. Other references to a local education authority shall be construed as references to the council of the county or county borough, and references to a public elementary school shall be construed as references to a national school, and any reference to the Elementary Education Act, 1876 [39 & 40 Vict. c. 79], or to the Education Acts, 1870 to 1907, or any of those Acts, shall not apply:

- (21) Any relief which can under this Act be given to the parent or other person ordered to contribute to the industrial training and meals of a child sent to a day industrial school shall be given by the board of guardians of the poor law union in which the parent or other person is resident, and shall be charged to the union:
- (22) An order made upon a parent or other person to contribute to the maintenance or expenses of a youthful offender or child under Part IV. of this Act and any other order enforceable in like manner may be enforced in the manner provided by section twenty-five of the Irish Reformatory Schools Act, 1868 [31 & 32 Vict. c. 59]:
- (23) Payments required by this Act to be made from the police fund of a district shall be made by the police authorities of the district, and those authorities shall be repaid in like manner as the said police fund, and the definitions of police authority and police fund in this Act shall not apply:
- (24) The expression "petty sessional division" in the police district of Dublin metropolis shall mean that district, and elsewhere in Ireland shall mean the petty sessions district:
- (25) No licence shall be granted in respect of a child under the age of fourteen years detained in a certified school except upon the condition of the child attending regularly some national or other efficient school named in the licence, and being a school under the management of a manager belonging to the religious persuasion to which the child belongs:
- (26) A board of guardians may, with the consent of the Local Government Board for Ireland, contribute to the funds of any society or body corporate for the prevention of cruelty to children:
- (27) The expression "managers of a district poor law school" in Part IV. of this Act means the board of management of a school for any two or more unions established under the Poor Relief (Ireland) Acts, 1838 to 1900, and the expression "district poor law school" means a school so established:

(28) The reference to the Criminal Evidence Act, 1898 [61 & 62 Vict. c. 36], shall not apply, but, in any proceeding against any person for an offence under Part II. of this Act, or for any of the offences mentioned in the First Schedule to this Act, such person shall be competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

(29) The provisions of section one hundred and twenty of this Act (relative to the exclusion of children from bars of licensed premises) shall not apply in the case of any child going to or being upon licensed premises if a substantial part of the business carried on upon the premises is a drapery, grocery, hardware, or other business wholly unconnected with the sale of intoxicating liquor, and the child, or the person (if any) in whose custody the child is, goes to or is upon the premises for the purpose of purchasing goods other than intoxicating liquor for consumption on the premises; and the reference in the said section to the Licensing Acts, 1828 to 1906, shall be construed as a reference to the Licensing (Ireland) Acts, 1833 to 1905.

**134. Short title, commencement, and repeal.]—**  
(1) This Act may be cited as the Children Act, 1908.

(2) Save as otherwise expressly provided, this Act shall come into operation on the first day of April, nineteen hundred and nine.

(3) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule: Provided that nothing in this repeal shall affect any notice or certificate given or any appointment or rules made under any enactment hereby repealed, and every such notice, certificate, appointment, and rules shall have effect as if given or made under this Act.

## SCHEDULES.

### PART II.

#### FIRST SCHEDULE.

Any offence under sections twenty-seven, fifty-five, or fifty-six of the Offences Against the Person Act, 1861 [24 & 25 Vict. c. 100], and any offence against a child or young person under sections five, forty-two, forty-three, fifty-two, or sixty-two of that Act, or under the Criminal Law Amendment Act, 1885 [48 & 49 Vict. c. 69].

Any offence under the Dangerous Performances Act, 1879 [42 & 43 Vict. c. 34] and 1897 [60 & 61 Vict. c. 52].

Any other offence involving bodily injury to a child or young person.

#### SECOND SCHEDULE.

[Section 128.]

First column. Adults pleading guilty.	Second column. Adults consenting.
	Committing an indecent assault upon a person, whether male or female, who in the opinion of the court is under the age of sixteen years.

### THIRD SCHEDULE.

#### ENACTMENTS REPEALED.

[Section 134.]

Session and Chapter.	Short Title.	Extent of Repeal.
17 & 18 Vict. c. clxix.	The Middlesex Industrial Schools Act, 1854.	The whole Act.
29 & 30 Vict. c. 117.	The Reformatory Schools Act, 1866.	The whole Act.
29 & 30 Vict. c. 118.	The Industrial Schools Act, 1866.	The whole Act.
31 & 32 Vict. c. 25.	The Industrial Schools (Ireland) Act, 1868.	The whole Act.
31 & 32 Vict. c. 59.	The Irish Reformatory Schools Act, 1868.	The whole Act, except section twenty-five.
53 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Sections twenty-seven and twenty-eight. Section fifty-two, so far as it relates to industrial schools. Section fourteen.
31 & 35 Vict. c. 112.	The Prevention of Crimes Act, 1871.	The whole Act.
35 & 36 Vict. c. 21.	The Reformatory and Industrial Schools Acts Amendment Act, 1872.	Section forty-one.
35 & 36 Vict. c. 62.	The Education (Scotland) Act, 1872.	In section thirty-two the words "to be under the age of twelve years or."
35 & 36 Vict. c. 93.	The Pawnbrokers Act, 1872.	Section fourteen.
36 & 37 Vict. c. 86.	The Elementary Education Act, 1873.	The whole Act.
37 & 38 Vict. c. 47.	The Prisons Authorities Act, 1874.	The whole Act.
38 & 39 Vict. c. lxxvii.	The Middlesex Industrial Schools Act, 1875.	Section twelve, from "A child shall be sent" to the end of the section.
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	In section thirteen the words "or the Industrial Schools Act, 1866, to an industrial school," and the words "or the Industrial Schools Act, 1866."
40 & 41 Vict. c. 53.	The Prisons (Scotland) Act, 1877.	Section fourteen. Section fifteen. Section sixteen. Section seventeen. Section sixty-seven.
41 & 42 Vict. c. 40.	The Prisons Authorities Act (1874) Amendment Act, 1878.	The whole Act.
42 & 43 Vict. c. 48.	The Elementary Education (Industrial Schools) Act, 1879.	The whole Act.
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879.	Sub-section (1) of section eleven from the words "and if the young person is a male" to the end of the sub-section. In section fifteen, the words "imprisoned for a longer period than one month nor."
43 & 44 Vict. c. 15.	The Industrial Schools Acts Amendment Act, 1880.	The whole Act.
44 & 45 Vict. c. 29.	The Reformatory Institutions (Ireland) Act, 1881.	The whole Act.
47 & 48 Vict. c. 19.	The Summary Jurisdiction over Children (Ireland) Act, 1884.	Sub-section (1) of section five from the words "and if the young person is a male," to end of sub-section. In section six the words "imprisoned for a longer period than one month nor."
47 & 48 Vict. c. 40.	The Reformatory and Industrial Schools (Manx Children) Act, 1884.	The whole Act.
48 & 49 Vict. c. 19.	The Industrial Schools (Ireland) Act, 1885.	The whole Act.
48 & 49 Vict. c. 60.	The Criminal Law Amendment Act, 1885.	Section four, from "and if, having regard" to "as if he or she had been sworn."
54 & 55 Vict. c. 23.	The Reformatory and Industrial Schools Act, 1891.	The whole Act.
56 & 57 Vict. c. 12.	The Day Industrial Schools (Scotland) Act, 1893.	Section three. Section four, from "an order under this section" to the end of the section. Section five. Section six. Section seven. In section eight the words "or under the Industrial Schools Act, 1866."
56 & 57 Vict. c. 48.	The Reformatory Schools Act, 1893.	Section nine. The whole Act.
57 & 58 Vict. c. 33.	The Industrial Schools Acts Amendment Act, 1891.	The whole Act.
58 & 59 Vict. c. 17.	The Reformatory and Industrial Schools (Channel Islands Children) Act, 1895.	The whole Act.



Session and Chapter.	Short Title.	Extent of Repeal.
60 & 61 Vict. c. 57	The Infant Life Protection Act, 1897.	The whole Act.
62 & 63 Vict. c. 12	The Reformatory Schools Act, 1899.	The whole Act.
63 & 64 Vict. c. 53	The Elementary Education Act, 1900.	Section four.
1 Edw. 7. c. 20	The Youthful Offenders Act, 1901.	The whole Act.
2 Edw. 7, c. 42	The Education Act, 1902	Paragraph (8) of the Third Schedule to "Elementary Education Act, 1873, and," and in the same paragraph the words "for the second reference in that section the Education Department and also."
4 Edw. 7, c. 15	The Prevention of Cruelty to Children Act, 1904.	Section one. In section two, paragraph (a). In section four, the words "or any of the offences mentioned in the First Schedule to this Act," and paragraph (b). Sections five to eleven. In section twelve, the words "or for any of the offences mentioned in the First Schedule to this Act." Section thirteen. Section fourteen. In section fifteen, the words "or for any of the offences mentioned in the First Schedule to this Act." Section sixteen. In section seventeen, the words "or any of the offences mentioned in the First Schedule to this Act." In section eighteen, the words "or any of the offences mentioned in the First Schedule to this Act," and the words "or of an offence mentioned in the First Schedule to this Act," and "or any offence mentioned in the First Schedule to this Act," and sub-section (2) from "and may charge him with the offences" to the end of that sub-section." Section nineteen, from "or when in the case" to "decision of the court," and the words "or order or decision." Section twenty. Section twenty-one. In section twenty-three, sub-section (2). Section twenty-five. Section twenty-six. Section twenty-eight. In section twenty-nine, the definitions of "street," "place of safety," and "Industrial Schools Acts." In section thirty, the words "The Secretary for Scotland shall be substituted for a Secretary of State," and the words from "The expression 'court of summary jurisdiction'" to the end of the section. In section thirty-one, the words "The Chief Secretary shall be substituted for a Secretary of State." The Schedules. The whole Act.
4 Edw. 7, c. 27	The Secretary for Scotland Act, 1904.	In section one, sub-section (3), from "and if the offender" to the end of the sub-section. Sub-section (4) of section six, from "In the case" to the end of the sub-section. Sub-sections (1) and (3) of section fifteen of the Schedule.
7 Edw. 7, c. 17	The Probation of Offenders Act, 1907.	
8 Edw. 7, c. xxvii.	The Edinburgh Corporation (Tramways, &c.) Order Confirmation Act, 1908.	

## CHAPTER 68.

[Port of London Act, 1908.]

An Act to provide for the improvement and better administration of the Port of London, and for purposes incidental thereto.

[21st December 1908.]

Be it enacted, &amp;c. :-

Establishment of Port of London Authority.

1. Establishment of Port of London Authority.]—(1) An authority (in this Act referred to as the Port Authority) shall be established for the purpose of administering, preserv-

ing, and improving the Port of London and otherwise for the purposes of this Act.

(2) The Port Authority shall be a body corporate by the name of the Port of London Authority, with a common seal, having power to acquire and hold land for the purposes of this Act without licence in mortmain.

(3) The Port Authority shall consist of a chairman and vice-chairman and other members elected and appointed in manner provided by this Act.

(4) Subject to the provisions of this section, the chairman and vice-chairman shall be appointed by the Port Authority; the person to

be appointed to either such office may, but need not, be an elected or appointed member.

(5) Subject to the provisions of this section, the number of elected members shall be eighteen, of whom seventeen shall be elected by payers of dues, wharfingers, and owners of river craft, and one shall be elected by wharfingers.

(6) Subject to the provisions of this section, the number of the appointed members shall be ten, appointed as follows :-

By the Admiralty	...	1
By the Board of Trade	...	2
By the London County Council (being members of the Council)	...	2
By the London County Council (not being members of the Council)	...	2
By the Corporation (being a member of the Corporation)	...	1
By the Corporation (not being a member of the Corporation)	...	1
By the Trinity House	...	1

(7) With a view to providing for the representation of labour on the Port Authority, one of the members of the Port Authority appointed by the Board of Trade shall be appointed by the Board after consultation with such organisations representative of labour as the Board think best qualified to advise them upon the matter, and one of the members of the Port Authority appointed by the London County Council shall be appointed by the council after consultation with such organisations representative of labour as the council think best qualified to advise them upon the matter.

(8) Until the time fixed by this Act for the first retirement of members, two at least of the members of the Port Authority shall be persons of experience in dock management, and, if in order to enable this requirement to be observed it is necessary to do so, the Board of Trade may appoint one or two additional appointed members.

(9) Subject to the provisions of this section, the Port Authority may pay to the chairman, vice-chairman, and chairman of any committee, or to any of them, such salaries or salary as the Port Authority may determine.

(10) Subject to the provisions of this section, the provisions contained in the First Schedule to this Act shall have effect with respect to the constitution and proceedings of the Port Authority and the election and appointment of members.

(11) The first elected members, instead of being elected as provided by this Act, shall be appointed by the Board of Trade after consultation with such persons and bodies having knowledge and experience of trade or shipping in the Port of London as the Board may think fit, and the first chairman shall, if the Board think fit, be appointed by the Board, and shall, if appointed by the Board, be paid such salary (if any) as the Board may determine.

## Powers and duties of Port Authority as to Accommodation and Facilities.

2. General duties of Port Authority as to improvement of accommodation and facilities.]—

(1) It shall be the duty of the Port Authority, as soon as may be after the appointed day, to take into consideration the state of the river and the accommodation and facilities afforded in the Port of London, and, subject to the provisions of this Act, to take such steps as they may consider necessary for the improvement thereof.

(2) For the purposes aforesaid the Port Authority may, subject to the provisions of this Act, do all or any of the following things :-

- carry on the undertaking of any dock company transferred to the Port Authority by this Act;
- acquire and carry on any undertaking affording or intended to afford accommodation or facilities for the loading, unloading or warehousing of goods in the Port of London;
- construct, equip, maintain, or manage any docks, quays, wharves, jetties, locks, or piers, and buildings, railways and other works in connexion therewith;
- exercise any other powers conferred on or transferred to the Port Authority by or under this Act.

3. *Transfer to Port Authority of undertakings of dock companies.*—(1) As from the appointed day the undertakings of the London and India Docks Company, the Surrey Commercial Dock Company, and the Millwall Dock Company (which companies are in this Act referred to as dock companies) shall be transferred to and vest in the Port Authority, and the Port Authority shall issue to those companies, or as they may direct, as consideration for their undertakings the following amounts of port stock created under this Act—

- (a) in the case of the London and India Docks Company, seven million nine hundred and seventy-eight thousand eight hundred and seventy-six pounds of A port stock, and nine million eight hundred and ninety-three thousand eight hundred and thirty-five pounds of B port stock;
- (b) in the case of the Surrey Commercial Dock Company, five hundred and twenty-two thousand pounds of A port stock and two million three hundred and eighty-eight thousand four hundred and eighty-five pounds of B port stock;
- (c) in the case of the Millwall Dock Company, six hundred and fifty-one thousand two hundred and seventy-six pounds of A port stock and nine hundred and twenty-eight thousand five hundred and four pounds of B port stock.

(2) The stocks so issued shall be substituted for the existing debenture and other stocks of the dock companies in accordance with the provisions of the Second Schedule to this Act, and on such substitutions being effected the existing debenture and other stocks of those companies shall be cancelled:

Provided that no interest shall accrue due on any such existing stock in respect of any period after the appointed day, but the port stock issued in substitution therefor shall carry interest as from the appointed day.

(3) Subject to the provisions of this Act and of any order of the Board of Trade made under this section, on the transfer of any such undertaking the Port Authority shall hold the undertaking, and may exercise all the rights, powers, and privileges of the company, and shall, to the exclusion of the company, be subject to all the duties, obligations, and liabilities of the company (other than those in respect of the debenture stock of the company) under the Acts, whether local or general, and other provisions relating to or affecting the company, and to all other duties, liabilities, and obligations of the company existing at the appointed day, in like manner as if they were the company.

(4) The Board of Trade may make such orders as may be necessary for the purpose of enabling the transfers to be effected and enabling the Port Authority to carry on the undertakings when transferred.

4. *Power to purchase undertakings.*—(1) It shall be lawful for the Port Authority and the owners of any undertaking affording or intended to afford accommodation or facilities for the loading, unloading, or warehousing of goods in the Port of London with the consent of the Board of Trade to enter into and carry into effect an agreement for the transfer of the undertaking to the Port Authority, and the Board of Trade may, on the application of the Port Authority or the owners, make such orders as may be necessary for the purpose of enabling the agreement to be carried into effect, and any such order may (amongst other things) provide, if the owners are a company, for the redemption and payment off of any debentures or debenture stock of the company, and for the dissolution of the company, and, if the whole or any part of the consideration under the agreement consists of port stock, as to the period within which provision is to be made for the redemption of that port stock.

(2) If the Port Authority desire to purchase any such undertaking but are unable to come to an agreement with the owners of the undertaking, it shall be lawful for the Port Authority to promote a Bill in Parliament for the purpose.

5. *Power to Port Authority to enter into agreements with London County Council as to transfer of piers, &c.*—The Port Authority and the London County Council may enter into and carry into effect agreements for or with respect to the acquisition by or transfer to the Port Authority, on such terms and conditions as may be agreed, of any piers and landing places belonging to or held by the said council, together with the powers of making byelaws, appointing tolls, rates, or charges, and of levying and enforcing the same, and with all other rights, powers, and authorities vested in or exercisable by the said council in respect of such piers and landing places, and, upon such acquisition or transfer, all the said powers, rights, and authorities shall become vested in and exercisable by the Port Authority.

6. *Power of Board of Trade to authorise construction of works, &c.*—(1) The Board of Trade may on the application of the Port Authority make an order—

- (a) authorising the construction and equipment of such docks, quays, wharves, jetties, or piers, and buildings, railways, and other works in connexion therewith as may be specified in the order;
- (b) authorising the purchase and taking otherwise than by agreement of such land as may be specified in the order;
- (c) authorising the imposition, levying, collection, and recovery of such dues, rates, tolls, and other charges in respect of the use of any works proposed to be constructed in pursuance of an order under this section, and conferring such powers of management of those works, as may be specified in the order;
- (d) authorising the Port Authority to charge to capital as part of the cost of construction of any work authorised by the order, the interest on any money raised to defray the expenses of construction of any such work and the acquisition of land for the purpose, for such period and subject to such restrictions as may be mentioned in the order:

Provided that—

- (i.) no land shall be authorised by an order under this section to be acquired compulsorily which is situate to the westward of the meridian six minutes of longitude east of Greenwich or which has been acquired by the owners thereof under any Local Act, Provisional Order, or order having the force of an Act of Parliament;
- (ii.) an order authorising the construction of new works shall impose on the Port Authority an obligation to provide such housing accommodation for the persons to be employed at the new works when constructed as the Board of Trade may from time to time consider requisite; and
- (iii.) Nothing in this section shall, without the consent of the Board of Agriculture and Fisheries, authorise the acquisition of any common or commonable land, or any recreation ground, village, green, or other open space dedicated to the use of the public, or any disused burial ground.

(2) Before making an order under this section, the Board of Trade shall appoint an impartial person, not in the employment of any Government Department, to hold a public inquiry on their behalf, and, if he reports or if it appears to the Board of Trade that by reason of the extent or situation of any land proposed to be acquired compulsorily, or the purposes for which such land is used, or any other circumstances, the land ought not to be acquired compulsorily without the sanction of Parliament, the order of the Board shall be provisional only and shall not have effect unless confirmed by Parliament.

(3) Any order made under this section authorising the purchase and taking of land otherwise than by agreement shall incorporate the Lands

Clauses Acts as if the order were a special Act within the meaning of those Acts.

(4) An order other than a Provisional Order made by the Board of Trade under this section shall not take effect until a draft thereof has lain for thirty days during the session of Parliament on the table of both Houses of Parliament, and, if either House during those thirty days presents an address to His Majesty against the draft, no further proceedings shall be taken thereon but without prejudice to the making of a new order.

*Provisions as to the Thames Conservancy.*

7. *Transfer of powers, &c., of Thames Conservators in respect of lower river.*—(1) Subject to the provisions of this Act, as from the appointed day there shall be transferred to the Port Authority all rights, powers, and duties of the Conservators of the River Thames (in this Act referred to as the Conservators) in respect of the River Thames below the landward limit of the Port of London and there shall also be transferred from the Conservators to the Port Authority the lower navigation fund and all liabilities in respect of, and any sinking fund applicable to the redemption of, the Thames Conservancy redeemable A debenture stock, and all property and liabilities of the Conservators held, acquired, or incurred in respect of the Thames below the landward limit of the Port of London.

(2) All enactments relating to the Conservators (except those regulating the funds and accounts of and borrowing by the Conservators) shall, so far as not repealed by this Act and so far as they relate to the rights, powers, duties, property, and liabilities transferred, have effect as if references to the Port Authority were substituted for references to the Conservators:

Provided that—

- (a) in any such enactments references to the Port of London shall be construed as references to the Port of London as defined by this Act; and
- (b) in any such enactments references to the River Thames above and below Teddington Lock shall be construed as references to the River Thames above and below the landward limit of the Port of London; and
- (c) in the definition of "the Thames" in section three of the Thames Conservancy Act, 1894 [57 & 58 Vict. c. clxxxvii.], for "an imaginary straight line drawn from the entrance to Yantlet Creek in the county of Kent to the City Stone opposite to Canvey Island in the county of Essex," there shall be substituted "the seaward limit of the port of London"; and in that definition after the words "railway company" there shall be inserted the words "and no part of the River Medway within the jurisdiction of the Conservators of that river"; and
- (d) for the proviso to sub-section (1) of section eighty-three of the Thames Conservancy Act, 1894 (which relates to the area within which the powers of dredging are, exercisable), there shall be substituted, "Provided that the Board of Trade may, on the application of the Port Authority, by Provisional Order extend the area within which the powers under this subsection may be exercised so as to include so much of the estuary of the River Thames and the shores thereof to the eastward of the seaward limit of the Port of London as is westward of such line as may be fixed by the Provisional Order"; and
- (e) so much of the Thames Conservancy Act, 1894, as exempts from duties of tonnage, vessels for passengers only shall be repealed; and
- (f) so much of the Thames Conservancy Act, 1905 [5 Edw. 7. c. cxviii.], as limits the period during which the increased duties of tonnage authorised by that Act may be demanded and received shall be repealed; and



- (g) enactments relating to powers and duties as to houseboats, and pleasure boats shall not apply to the Port Authority; and
- (h) the powers and duties of the Port Authority and their officers with respect to fishing boats, fish, and fishing, shall, unless and until such an order as is herein-after mentioned is made, extend to the line drawn from Yantlet Creek to the City Stone opposite to Canvey Island but not eastward of that line, but the Board of Agriculture and Fisheries may, with the consent of the Board of Trade, make an order either—

(i) excluding from the Kent and Essex sea fisheries districts such part of the Port of London as is included therein, and extending the said powers and duties of the Port Authority and their officers to the part of the Port of London eastward of the said line; or

(ii) extending the Kent and Essex sea fisheries district to such part of the Port of London westward of the said line as may be specified in the order, and excluding such part from the area within which the said powers and duties of the Port Authority and their officers may be exercised and performed;

And any order made for that purpose shall have effect as if it was an amending order made under the Sea Fisheries Regulation Act, 1888 [51 & 52 Vict. c. 54]; and

- (i) if the Port Authority revoke any licence for any of the purposes mentioned in sections one hundred and nine and one hundred and ten of the Thames Conservancy Act, 1894, granted by the Conservators or their predecessors and, in force at the appointed day, or refuse to grant a licence for any such purpose on reasonable terms, the licensee or applicant may appeal against the revocation or refusal to the Board of Trade and the decision of the Board of Trade shall be final and binding on both parties; and
- (j) subsection (4) of section one hundred and ninety-three of the Thames Conservancy Act, 1894, relating to the publication of alterations in and additions to byelaws shall not apply; and
- (k) so much of any such enactments as confers powers in relation to pollution shall not apply in the case of any tributaries of the Thames in the county of Middlesex.

(3) Nothing in this section shall be construed as conferring on the Port Authority any right or interest in or to the bed or shore of the River Thames eastward of the said line drawn from Yantlet Creek to the City Stone opposite to Canvey Island, or as authorising the Port Authority, except with the consent of a Government Department, to take, use, or in any manner interfere with, or to authorise any person to take, use, or interfere with any portion of the bed or shore of the Thames eastward of the said line, which, or the management of which, is vested in that Department, and sections one hundred and sixteen and two hundred and thirty-nine of the Thames Conservancy Act, 1894, shall not apply with respect to the Thames eastward of the said line; but a Government Department may transfer to the Port Authority upon such terms as may be respectively agreed on between them and the Port Authority any interest or right of His Majesty in right of His Crown, or His Duchy of Lancaster, or of the Department, in or to any portion of the bed or shore of the Thames between the said line and the line drawn from Warden Point to the entrance of Havengore Creek the management whereof is vested in the Department.

**8. Reconstitution of Conservators.**—(1) As from the appointed day the number of Conservators shall be twenty-eight, who shall be ap-

pointed by the authorities and in the manner set forth in the Third Schedule to this Act, and the persons who immediately before that day are the Conservators shall cease to hold office as such: Provided that nothing in this section shall prevent the appointment thereunder as a Conservator of any person who was a Conservator immediately before the appointed day.

(2) As from the appointed day all moneys received by the Conservators shall be paid into, and all expenses incurred by the Conservators shall be paid out of, and all moneys borrowed by the Conservators shall be charged on the upper navigation fund, whether received, incurred, or borrowed in respect of the Thames above or below the City Stone above Staines Bridge, and in sections two hundred and forty-one to two hundred and eighty-seven of the Thames Conservancy Act, 1894 (being provisions regulating the funds and accounts of, and borrowing by, the Conservators), references to the Thames above the landward limit of the Port of London shall be substituted for references to the Thames above the City Stone above Staines Bridge.

(3) All moneys payable to the Conservators by the Metropolitan Water Board, the West Surrey Water Company, the South West Suburban Water Company, and the Woking Water and Gas Company, whether in pursuance of the Thames Conservancy Act, 1894, or otherwise, shall be paid to the Conservators, and no part thereof shall be paid to the Port Authority.

(4) So much of section thirty-three of the Thames Conservancy Act, 1894, as enables the Conservators to set apart a sum for the payment of the Conservators other than the chairman shall as from the appointed day be repealed:

Provided that nothing in this repeal shall prevent the Conservators paying any reasonable expenses incurred by individual Conservators in attending meetings of the Board of Conservators and committees thereof or otherwise in the execution of their duties as Conservators.

(5) One hundred and thirty thousand pounds shall be substituted for one hundred thousand pounds as the maximum sum which the Conservators are authorised to borrow under subsection (2) of section two hundred and fifty-three of the Thames Conservancy Act, 1894; and for removing doubts it is hereby declared that the powers of borrowing conferred on the Conservators by that subsection are and shall be deemed always to have been in addition to the power of the Conservators of creating and issuing debenture stock for the purposes mentioned in paragraphs (b) and (c) of subsection (2) of section two hundred and fifty-nine of that Act.

(6) The right of the Conservators to appoint a member of the Metropolitan Water Board shall be retained by the Conservators and shall not be transferred to the Port Authority.

(7) On complaint being made to the Local Government Board—

- (a) by the Port Authority, the Metropolitan Water Board, the London County Council, or the Corporation, or by any local authority or water company who appear to the Local Government Board to be interested, that the Conservators have failed to perform the duties imposed upon them with respect to the preservation and maintenance of the flow and purity of the Thames and its tributaries, or have failed to exercise any powers conferred upon them for that purpose; or
- (b) by the council of any county, borough, district, or parish adjoining the Thames, that the Conservators have failed to exercise any powers conferred on them for the purpose of preserving the rights and interests of the public in respect to the Thames and its towpaths which they ought to have exercised;

the Local Government Board, if they think that there is reasonable ground for complaint, shall call upon the Conservators for an explanation, and, if the Conservators shall not, within such time as the Local Government Board may fix, give a sufficient explanation or remedy the cause of complaint, the Local Government Board may make such order as in their opinion the circum-

stances require, and such order shall be binding on the Conservators.

The Local Government Board may in any case in which they may think fit so to do, hold a local inquiry for the purposes of this section, and the provisions of section seventy-two of the Local Government Act, 1894 [56 & 57 Vict. c. 73], with respect to local inquiries by the Local Government Board shall apply to any local inquiries so held.

(8) The Board of Trade may by Provisional Order make such amendments, modifications, and repeals of the enactments relating to the Conservators, so far as they continue to apply to the Conservators after the appointed day, as the Board may consider to be necessary in consequence of the passing of this Act, and in particular any such Provisional Order may contain provisions for—

- (a) regulating the term of office, rotation, disqualification, removal and appointment to casual vacancies of the Conservators;
- (b) revising the tolls, fees, and other charges (except the sums which are payable to the Conservators by the Metropolitan Water Board or any water company) leviable by the Conservators.

**9. Substitution of port stock for Thames Conservancy A debenture stock.**—(1) Within one year from the appointed day all the Thames Conservancy redeemable A debenture stock shall be extinguished, and the Port Authority shall issue to the holder of any such stock in substitution therefor an equal amount of A port stock created under this Act.

(2) As soon as the Port Authority resolve to issue port stock in substitution for any debenture stock in accordance with this section they shall give notice of their intention to do so by advertising it once in the "London Gazette" and in two or more London daily newspapers, and by sending notice by post to each of the holders of the debenture stock to his registered address, and the notice shall specify the place and the time, not being less than three months from the date of the notice, at which the issue of the port stock will be made.

(3) Before port stock is issued under this section in substitution for any debenture stock the certificate of that stock shall be produced and delivered to the Port Authority. Provided that the Port Authority shall dispense with the production and delivery of a certificate upon receiving such indemnity as may be reasonably required.

(4) As from the time fixed by the notice for the issue of port stock in substitution for any debenture stock, that debenture stock shall be cancelled and extinguished and no interest shall after that time accrue due in respect thereof, but the port stock issued in substitution therefor shall carry interest as from the time so fixed.

**10. Relations between Port Authority and the Conservators.**—(1) The Port Authority may make arrangements with the Conservators for the exercise by the Conservators in the Port of London on behalf of the Port Authority of the powers of the Port Authority for regulating the passage of vessels on the Thames on the occasion of a regatta, boat race, or other similar occasion.

(2) Where a steam launch has been registered, either by the Port Authority or the Conservators, and a certificate thereof is in force, its registration by the other of those authorities shall not be required, and the Port Authority and the Conservators may respectively, during office hours, inspect the register of steam launches kept by the other, and shall afford to one another all reasonable information in regard thereto.

**Provisions as to the Watermen's Company, &c.**

**11. Transfer of certain powers and duties of the Watermen's Company.**—(1) Subject to the provisions of this Act, as from the appointed day there shall be transferred to the Port Authority all powers and duties of the Master, Wardens, and Commonalty of Watermen and Lightermen of the River Thames (in this Act referred to as "the Watermen's Company") and of the Court

of Master, Wardens, and Assistants of the Watermen's Company (in this Act referred to as "the Court of the Watermen's Company") with respect to—

- (a) the registration and licensing of craft and boats;
- (b) the licensing of lightermen and watermen; and
- (c) the government, regulation, and control of lightermen and watermen (including the appointment of plying places and of inspectors);

and there shall also be transferred from the Company to the Port Authority all property and liabilities of the Company held, acquired or incurred by the Company in connexion with the powers and duties so transferred:

Provided that—

- (a) an arrangement shall be made, unless the Port Authority otherwise determine, between the Port Authority and the Watermen's Company for the exercise and performance by the Company on behalf of the Port Authority of any of their powers and duties with respect to the licensing of lightermen and watermen (other than the power of making bye-laws with respect thereto) upon such terms and conditions as may be agreed between the Authority and the Company, but any such arrangement shall provide for an appeal lying to the Port Authority from the refusal by the Watermen's Company to license a lighterman or waterman; and
- (b) nothing in this section shall be construed as transferring to the Port Authority Watermen's Hall, or the sum of six thousand seven hundred and forty-one pounds nine shillings Consolidated two-and-a-half per cent. stock standing in the name of the Company, or any debt of the Company outstanding at the appointed day to the discharge of which such stock as aforesaid or the proceeds thereof could legally be applied, or the sum of four thousand two hundred and twenty-five pounds six shillings and ten pence Metropolitan Water B Stock standing in the name of the Company, or the freehold property known as Nos. 16 and 17, St. Mary-at-Hill, in the parish of Billingsgate, in the city of London, or any property held for charitable purposes.
- (2) All enactments relating to the Watermen's Company and the Court of the Watermen's Company shall, so far as not repealed by this Act, and so far as they relate to the powers and duties transferred, have effect as if references to the Port Authority were substituted for references to the Company and to the Court:

Provided that—

- (a) the limits of the Watermen's and Lightermen's Amendment Act, 1859 [22 & 23 Vict. c. cxxxiii.] and the Thames Watermen's and Lightermen's Act, 1893 [56 & 57 Vict. c. xxxi.], shall, except for the purposes of sections fifty-four, sixty-six, and sixty-seven of the first-mentioned Act, be the limits of the Port of London as defined by this Act; and
- (b) the Port Authority may by byelaw vary the provisions of sections fifty-six to sixty of the Watermen's and Lightermen's Amendment Act, 1859, and Part VI. of the Thames Conservancy Act, 1894, with respect to the qualifications to be possessed by applicants for lightermen's and watermen's licences and certificates and the conditions on which such licences or certificates are to be granted or renewed, and as from the date on which any such byelaw comes into operation those provisions shall be repealed to such extent as may be specified in the byelaw; but no such byelaw shall so vary those provisions as to authorise the grant of a licence or certificate to a person who has not for a period of at least two

years been engaged in working on a craft or boat in the Port of London; and

- (c) an appeal shall lie to the Board of Trade instead of to a court of summary jurisdiction against a refusal by the Port Authority to register any craft or boat, or against the revocation by the Port Authority of any certificate or licence relating to any craft or boat; and
- (d) at the end of section three hundred and eleven of the Thames Conservancy Act, 1894 (which exempts certain craft from the provisions of sections fifty-four and sixty-six of the Watermen's and Lightermen's Amendment Act, 1859), there shall be added the words, "or to any lighters on a voyage commencing or ending at any place eastward or westward of the limits of that Act, whether or not goods are in the course of the voyage taken in or discharged at any place within those limits," and the expression "limits of that Act," as used in that section as so amended, means the limits of that Act for the purposes of the said sections fifty-four and sixty-six; and
- (e) so much of any such enactment as limits the fees which may be imposed in respect of the registration or licensing of crafts and boats, shall be repealed, but the fees so imposed shall not exceed such as may be allowed by a Provisional Order made by the Board of Trade as soon as practicable after the passing of this Act or any Provisional Order made subsequently varying the same, or, until such first mentioned Provisional Order is confirmed, by an order made for the purpose by the Board of Trade; and
- (f) the provisions of the Thames Watermen's and Lightermen's Act, 1893, as amended by this Act—
  - (i) so far as they relate to craft, shall extend to all lighters, barges, and other like craft for carrying goods, and to steam-tugs; and
  - (ii) so far as they relate to boats, shall extend to all boats, wherries, and other such vessels (including river steamboats) let for hire for carrying persons,
 navigating either wholly or partly within the limits of that Act as so amended, except such as are expressly exempted from those provisions, or as are employed solely in voyages extending entirely through those limits without taking in or discharging goods or embarking or disembarking passengers within those limits; but section seven of that Act, as so amended, shall not apply to a craft navigating occasionally or exceptionally only within those limits, and where a certificate has been granted under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), as to the number of passengers which any river steamboat is fit to carry, that number shall be the number of persons which she shall be licensed to carry under the said Act as so amended; and
- (g) in considering the fitness of a craft or boat for carrying goods or persons for the purposes of section sixteen of the Thames Watermen's and Lightermen's Act, 1893, the Port Authority shall take into consideration the condition as respects accommodation, sanitary arrangements, and otherwise of the craft or boat having regard to the purposes for which the craft or boat is intended to be employed; and
- (h) the power of making byelaws under the Thames Watermen's and Lightermen's Act, 1893, shall include a power of making byelaws regulating the equipment of craft or any class of

craft navigated within the limits of that Act as amended by this Act.

**12. Provisions as to freemen and as to Sunday ferries and other charities of the Watermen's Company.**—(1) Every person possessing such qualifications as the Court of the Watermen's Company may by byelaw prescribe shall as from the appointed day be qualified to be elected a freeman of the Company.

(2) So much of the Watermen's and Lightermen's Amendment Act, 1859, as relates to Sunday ferries and the appointment and licensing of watermen or lightermen to ply on Sundays, shall as from the appointed day be repealed, and the Port Authority shall pay to the Watermen's Company in respect of any Sunday ferry established under that Act, and existing at the passing of this Act, such sum as, in default of agreement, may be determined by an arbitrator appointed by the Board of Trade.

(3) Penalties and forfeiture paid to the Port Authority under section ninety of the Watermen's and Lightermen's Amendment Act, 1859, as applied by this Act, shall be applied by the Port Authority as part of their general funds, and the Port Authority shall pay to the Watermen's Company in respect of the loss of such penalties and forfeitures such sum as, failing agreement, may be determined by an arbitrator appointed by the Board of Trade.

(4) The sums to be so paid to the Watermen's Company shall be paid into and form part of and be held on the trusts affecting the Poor's Fund of the Watermen's Company.

(5) If the Charity Commissioners are at any time of opinion that by reason of any alteration in the constitution or nature of the Watermen's Company or the qualifications to be possessed by freemen, the trusts affecting the Poor's Fund of the Company require to be modified, the Charity Commissioners may, either on the application of the Watermen's Company or without any such application, establish a scheme under the Charitable Trusts Acts, 1853 to 1894, regulating the application and administration of the Poor's Fund, regard being had to the purposes to which that fund is at the passing of this Act applicable.

#### Financial Provisions.

**13. Port rates on goods.**—(1) Subject to the provisions of this section, as from such day as may be fixed by the Board of Trade not being more than thirteen weeks after the Provisional Order embodying the schedule mentioned in subsection (2) of this section has been confirmed by Parliament, all goods imported from parts beyond the seas or coastwise into the Port of London or exported to parts beyond the seas or coastwise from that port, shall, subject to any exemptions or rebates which may be contained in a Provisional Order under this section or allowed by the Port Authority, be liable to such port rates as the Port Authority may fix, not exceeding such rates as may be specified in any Provisional Order, made by the Board of Trade for the time being in force, but the port rates charged by the Port Authority shall at all times be charged equally to all persons in respect of the same descriptions of goods under the like circumstances, and shall be charged separately from any other dues payable to the Port Authority:

Provided that—

- (a) Nothing in this section shall authorise the Port Authority to charge lower port rates in respect of goods to be discharged from a vessel in a dock of the Port Authority, or to be landed on the premises of or warehoused with the Port Authority, by reason only that the goods are to be so discharged, landed, or warehoused;
- (b) The Provisional Order under this section shall provide for exempting from such rates goods imported for transshipment only, or which remain on board the ship in which they were imported for conveyance therein to another port, and may determine what goods are for the purposes of such exemption to be treated as goods imported for transshipment only.



(2) Within six months after the appointed day the Port Authority shall submit to the Board of Trade a schedule of maximum port rates on goods, and the Board of Trade shall embody the schedule in a Provisional Order made for the purposes of this section, either without modifications or with such modifications as the Board think fit, and, if the Port Authority fail within such period as aforesaid to submit to the Board of Trade such a schedule, the Board shall themselves prepare and embody in such a Provisional Order a schedule of maximum port rates on goods:

Provided that the rates specified in the Schedule shall be such that, in the opinion of the Board of Trade, the amount of revenue produced thereby will, with the other receipts on revenue account of the Port Authority, be sufficient to meet the expenditure on all the purposes to which the receipts of the Port Authority on revenue account are by this Act to be applied and to provide a reasonable margin for contingencies.

(3) If in each of two successive years the aggregate amount received from port rates on goods exceeds one-thousandth part of the aggregate value of the goods imported into and exported from the Port of London from and to parts beyond the seas in the year, or, if the amount received from port rates on goods discharged from or taken on board ships not within the premises of a dock of the Port Authority exceeds one three-thousandth part of the said aggregate value, it shall be the duty of the Port Authority to take the necessary steps to prevent the continuance of the excess, including, if necessary, an application to Parliament to provide them with further means of meeting their financial obligations.

(4) A Provisional Order under this section may provide for the method of the collection and recovery of port rates on goods imposed under this section, and may for that purpose incorporate all or any of the provisions of the Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), with respect to the collection and recovery of rates, so far as they relate to rates on goods, but shall provide that in the event of the owner or consignee of any goods liable to pay any port rates to which those goods are subject under this section not having paid those rates by the time when the goods are ready to be discharged, the owner or master of the vessel in which the goods are carried may himself pay such rates, and thereupon shall have a lien on the goods and all the rights and powers in respect of the same as he would have under Part VII. of the Merchant Shipping Act, 1894, in respect of unpaid freight or other charges, and where the goods are to be delivered to a public wharfinger that he may pay such rates on behalf of the owner or consignee of the goods, and thereupon shall have the like lien on the goods as he would have in respect of charges for the safe custody of the goods; and such Provisional Order may authorise the making of special arrangements respecting the time and method of payment of port rates on goods by any persons who at frequent intervals become liable to pay those rates, whether on their own account or on account of any other persons.

(5) For the purpose of this section goods shall not be treated as having been imported or exported coastwise unless imported from or exported to a place seaward of a line drawn from Reculvers Towers to Colne Point, being a line determined by the Treasury in pursuance of the power conferred upon them by section one hundred and forty of the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), or any line that may be substituted therefor by the Treasury in pursuance of such power as aforesaid:

Provided that with respect to goods originally imported from a place seaward of the said line to a place westward of the said line and thence imported into the Port of London, and with respect to goods exported from the Port of London to a place westward of the said line and thence exported to a place seaward of the said line, such goods shall for the purposes of this sub-section be considered as having been imported from or exported to a place seaward of the said line, and not from or to a place westward of the said line, unless they are landed at the latter place, but

the authority having jurisdiction in the port of such intermediate place shall, if so required by the Port Authority, collect and pay over to the Port Authority the port rates to which the goods would have been liable had they been imported direct to or exported direct from the Port of London, and for that purpose shall have all such powers of collecting rates as are by or under this section conferred on the Port Authority, and shall be entitled to be repaid by that authority any expenses properly incurred by them in the exercise of those powers.

**14. Dock dues on vessels.]** The provisions contained in the enactments relating to the London and India Docks Company conferring on that company power to demand and take rates, rents, and sums in respect of vessels entering, lying in, or departing from the docks, basins, cuts, or entrances of that company, or granting any exemptions or immunities from any such rates, rents, or sums, shall continue to apply in respect of vessels entering, lying in, departing from, or otherwise using the docks, basins, cuts, or entrances and shall also apply in respect of vessels entering, lying in, departing from, or otherwise using docks, basins, cuts, or entrances constructed by the Port Authority under this Act, or transferred from any other dock company to the Port Authority by this Act, and shall as respects docks, basins, cuts, or entrances so transferred be substituted for the provisions as to rates and other charges on vessels contained in the enactments relating to the companies whose undertakings have been so transferred:

Provided that—

(a) In the case of the undertaking of the Surrey Commercial Dock Company, this provision shall not apply to vessels passing along the canal of that company, and not otherwise using the docks of that company when transferred; and

(b) Nothing in this section shall be construed as extending any limitation on the immunities conferred by section twenty-eight of the Harbours, Docks, and Piers Clauses Act, 1847, to the case of any dock, basin, cut, or entrance to which that section applied without limitation at the time of the passing of this Act.

**15. Prohibition of preferential dock charges.]—**

(1) The Port Authority shall not make any agreement, nor shall they renew any agreement subsisting at the appointed day by which any preferential dues or allowances on vessels or goods, or for discharging the same, are or may be provided for, but, subject and without prejudice to any express statutory provision and to any agreements which may be subsisting at the appointed day, all dues imposed by the Port Authority in exercise of the powers transferred to or conferred on them by or under this Act, shall be charged equally in respect of all vessels of the same description carrying the same description of goods under the same circumstances or, as the case may be, in respect of all goods of the same description under the same circumstances in the same dock.

(2) This provision shall as from the appointed day be substituted for the provisions contained in the Acts of the several dock companies relating to equality of charges.

**16. Port fund.]** There shall be established a port fund, and all receipts of the Port Authority shall be carried to that fund, and all payments by the Port Authority shall be made out of that fund.

**17. Security for transferred liabilities.]—(1)** As from the appointed day any debentures, debenture stock, mortgage debts, or other charges, the liability for which is by or under this Act transferred to the Port Authority, secured on the whole or any part of the undertaking or revenue of a dock company, or on the lower navigation fund or any revenue of the Conservators, shall, with the interest thereon, be, by virtue of this enactment, secured in like manner on the port fund; and any debentures, debenture stock, mortgage debts, or other charges secured on any specific property of any such company or the Conservators, the liability for which is so trans-

ferred, shall remain charged on that property; and any debenture holder, holder of debenture stock, mortgagee or other person secured, shall have the same rights and remedies, as nearly as may be, against the Port Authority, and against the port fund or any specific property charged, as he would have had against the company or the Conservators, and against the undertaking, lower navigation fund, or revenue, or the specific property charged, if this Act had not been passed.

(2) Subject to the provisions of this Act with respect to the substitution of A port stock for Thames Conservancy A debenture stock, the Port Authority may agree with the holder of any such debentures, mortgagee, or other person secured for the substitution of such amount of port stock of such class as may be agreed for the debentures, mortgage, or other security.

**18. Powers of borrowing.]—(1)** The Port Authority may borrow money for the purpose of—

- (a) raising any money payable in respect of the transfer of the undertaking of any dock company under this Act;
- (b) purchasing, redeeming, or paying off any debentures, mortgage debt, or other charge the liability for which is transferred to the Port Authority by or under this Act;
- (c) raising any money payable in respect of the transfer, under this Act, of any undertaking affording or intended to afford accommodation or facilities for loading, unloading or warehousing goods in the Port of London;
- (d) dredging and otherwise improving the river;
- (e) constructing works for improving the accommodation and facilities of the Port of London, or acquiring land for any such work;
- (f) paying any compensation payable under this Act otherwise than by way of annuity;

and, with the consent of the Board of Trade, for the purpose of any payment by the Port Authority or of any work or other thing which the Port Authority are authorised to execute or do, and which or the cost of which ought, in the opinion of the Board of Trade, to be spread over a term of years.

(2) Money borrowed under this section may be borrowed in such manner as the Board of Trade may by order direct, and such money and the interest thereon shall be charged on the port fund or on such property or revenues of the Port Authority, and in such manner as the Board of Trade may sanction.

(3) Any money borrowed under this Act, if borrowed for the purpose of—

- (a) raising any money payable in respect of the transfer of the undertaking of any dock company under this Act; or
- (b) purchasing, redeeming, or paying off any debentures, mortgage debt, or other charge; or
- (c) raising any money payable in respect of the transfer under this Act of any undertaking affording or intending to afford accommodation or facilities for loading, unloading, or warehousing goods in the Port of London; or
- (d) constructing any works for improving the accommodation and facilities of the Port of London (other than dredging) or acquiring land for any such work;

shall be repaid within such period not exceeding ninety years, and, if borrowed for any other purpose, shall be repaid within such period not exceeding sixty years, from the date of the borrowing as the Port Authority with the consent of the Board of Trade may, having regard to the circumstances of each particular case, determine.

(4) For the purpose of paying off a loan raised under this Act, the Port Authority shall have the like powers of re-borrowing as a county council have under section sixty-nine of the Local Government Act, 1888 (51 & 52 Vict. c. 41), and the provisions of that section so far as they relate to re-borrowing shall apply as if they were herein re-enacted and in terms made applicable to the

Port Authority and to the security on which the Port Authority are by or under this Act authorised to borrow.

**19. Issue of port stock.**—(1) For the purpose of enabling the Port Authority to raise money which they are authorised to borrow, and to issue any port stock which, by or under the provisions of this Act, is to be, or may be, issued, the Port Authority may create stock, to be called Port of London Stock, and in this Act referred to as port stock.

(2) The port stock so created shall consist of A port stock bearing interest at three per cent., and B port stock bearing interest at four per cent. per annum, and, if the Port Authority so determine, of other classes of port stock ranking *pari passu* with B port stock and bearing interest at such rate as the Port Authority may resolve.

(3) A port stock and the interest thereon, and subject thereto all other port stock and the interest thereon, shall be charged on the port fund and on all the revenues of the Port Authority.

(4) Subject to the provisions of this Act all port stock created by the Port Authority under the powers of this Act shall be issued, transferred, dealt with, and redeemed in accordance with regulations to be made by an order of the Board of Trade prior to the issue of any such port stock, or such other regulations as the Board of Trade may from time to time by order prescribe, and such regulations may without prejudice to the generality of the above provision provide for the consent of limited owners, and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section with or without modifications any enactments of the Local Loans Act, 1875 (38 & 39 Vict. c. 83), and the Acts amending the same, and of any Act relating to stock issued by the County Council of London, or by the corporation of any municipal borough.

Provided nevertheless that the regulations to be made as aforesaid—

(a) shall authorise the holders of port stock of any class or classes of an aggregate nominal value of not less than five hundred thousand pounds in respect of the payment of interest on which the Port Authority have made default for a period of not less than three months to apply to the High Court for the appointment of one or more receivers and managers of the revenues, property, and undertaking of the Port Authority; and

(b) shall not make A port stock or B port stock redeemable before the expiration of twenty years from the appointed day; and

(c) shall require at least six months' notice of intention to redeem port stock to be given; and

(d) shall provide for the interest on A and B port stock being paid half-yearly and shall fix the date for the first payment of interest on A port stock not later than the first day of July nineteen hundred and nine, and the date for the first payment of interest on B port stock not later than the first day of August nineteen hundred and nine.

(5) The total amount of port stock created under this Act and for the time being outstanding shall not, unless Parliament otherwise determine, exceed by more than five million pounds the amount of port stock issued as the consideration for or in connection with the transfer of the undertakings of the dock companies.

**20. Provisions as to discharge of loans, &c.**—(1) The Port Authority shall, in accordance with regulations made by the Board of Trade, by the creation of one or more sinking or redemption funds or otherwise, make provision for—

(a) the redemption within a period of ninety years from the date of the transfer of the undertaking of any dock company of the amount of any port stock issued by the Port Authority as consideration for or in connection with that transfer, or issued by the Port Authority in substitution for any de-

bentures, mortgages, or other securities of the company the liability for which is transferred to the Port Authority by this Act; and

(b) the redemption, within a period of sixty years from the date of the substitution, of any port stock issued under this Act by the Port Authority in substitution for any Thames Conservancy A debenture stock; and

(c) the repayment within the periods within which they are under this Act to be repaid of any sums borrowed by the Port Authority under this Act:

Provided that, as respects any stock issued or money borrowed, the period for the redemption or repayment of which is or may be ninety years, the Port Authority shall not, during the first ten years of the period allowed for redemption or repayment, be required to make any payments into any sinking or redemption fund for or otherwise towards the redemption or repayment of the stock or loan.

(2) Any regulations made by the Board of Trade under this section, so far as they relate to the repayment of any loans, may apply with or without modifications any enactments of the Local Loans Acts, 1875, and the Acts amending that Act, and may contain such other provisions as appear to the Board of Trade necessary or proper, and shall have effect as if they were enacted in this Act.

**21. Order in which revenue to be applied.**—The receipts of the Port Authority on revenue account in any year shall be applied to the following purposes in the following order:—

(1) The payment of working and establishment expenses and the cost of the maintenance of the port, and of the execution and performance of the powers and duties of the Port Authority (including amongst other things payments on account of pensions, superannuation allowances, and compensation payable to officers and servants) properly chargeable to revenue account;

(2) The payment of interest on A port stock and any arrears thereof;

(3) The payment of interest on other classes of port stock and any arrears thereof;

(4) The payment of interest on any loan raised by the Port Authority otherwise than by the issue of port stock;

(5) The payment of any sums required under this Act to be paid into any sinking or redemption fund, or otherwise towards the discharge of any capital liability;

(6) The payment into the reserve fund created under this Act of any sums required by this Act to be paid into that fund;

and the balance, if any, shall be applicable to such purposes and in such manner, for the benefit of the port, as the Port Authority may determine:

Provided that—

(a) The Port Authority shall be entitled at the end of the year to carry forward such sum as may be reasonably necessary for meeting current expenses; and

(b) The payment of interest on any debentures, debenture stock, mortgage debts, and other charges, the liability for which is by this Act transferred to the Port Authority, and the payment of interest on and the repayment of such temporary advances as the Port Authority are by this Act authorised to obtain with a view to supplying funds immediately on and for five years after entering on the undertakings of the dock companies shall, so long as payable, rank before the payment of interest on A port stock; and

(c) If the Board of Trade so direct, the payment of interest on a temporary loan, repayable in a period not exceed-

ing two years (other than such a temporary advance as last aforesaid) shall rank *pari passu* with the payment of interest on any class of port stock; and

(d) The certificate of the auditor of the accounts of the Port Authority, subject to such variations as the Board of Trade may allow, shall be conclusive as to the amount available for any of the purposes aforesaid.

**22. Reserve fund.**—(1) The Port Authority shall carry to a reserve fund such part of the receipts on revenue account as is available for the purpose until the fund amounts to one million pounds, and, if the fund is subsequently reduced below that amount, the Port Authority shall carry to the fund so much of any such receipts as is required to restore the fund to that amount and is available for the purpose.

(2) The reserve fund so formed shall be applicable only towards meeting any deficiency on revenue account in any year. Provided that, if it is proved to the satisfaction of the Board of Trade that it is expedient to apply any part of it to any other purpose, the Board may by order authorise the Port Authority to apply so much thereof as may be specified in the order to such other purpose, subject, however, to such conditions (if any) as may be specified in the order.

(3) The sums paid into the reserve fund shall be invested in the prescribed manner.

**23. Power of Board of Trade to order increase of dues.**—(1) The Port Authority shall at the beginning of every financial year of the Port Authority submit to the Board of Trade an estimate of the receipts and expenditure of the Port Authority during that financial year, whether on account of property, dues, loans, or otherwise.

(2) If the Board of Trade are satisfied that the receipts of the Port Authority on revenue account in any year are likely to be insufficient to meet the charges payable out of revenue in that year, or that the receipts of the Port Authority on revenue account in the last preceding year were insufficient to meet the charges payable out of revenue in that year, the Board may make an order requiring the Port Authority to levy any additional or increase any existing dues which they are authorised to levy to such extent and for such period as the Board may specify in the order, and the Port Authority shall comply with the order so made, so however that neither the additional nor the increased dues shall exceed the maxima allowed by law.

**24. Accounts and audit.**—(1) As soon as may be after the end of each financial year of the Port Authority the accounts of the Port Authority, and any committee appointed by them, and of their officers, shall be made up to the end of that year and shall be in such form and contain such particulars as may for the time being be prescribed by the Board of Trade, and shall be audited by an auditor appointed by the Board of Trade:

Provided that—

(a) the regulations made by the Board of Trade shall provide for the accounts of all sums expended by the Port Authority in erecting, maintaining, and managing warehouses, and of all receipts in respect of the warehousing of goods, being kept distinct from the other accounts of the Port Authority, and for those accounts being audited as a separate section of the accounts of the Port Authority; and

(b) in prescribing the form of accounts the Board of Trade shall have regard to the desirability of showing separately, so far as practicable, such items of receipts and expenditure on capital and revenue account as are wholly or mainly attributable to the dock undertakings of the Port Authority, and in particular the regulations shall provide that all receipts from port rates on goods discharged from or taken on board ships not within the dock premises of the Port Authority shall be shown separately from the receipts from port rates on goods discharged



from or taken on board ships within such premises.

(2) The Port Authority shall give to the auditor access to such books and documents as are necessary for the purposes of the audit, and shall when required furnish to him all vouchers and information requisite for that purpose, and shall afford to him all facilities for the proper execution of his duty.

(3) If the auditor reports to the Board of Trade that the Port Authority have declined or neglected to comply with any of his recommendations or requirements, the Board may, if they think fit, after giving the Port Authority an opportunity of being heard, make an order directing the Port Authority to comply with such recommendations and requirements, with or without modification, as may be specified in the order.

(4) Within fourteen days after completion of the audit the Port Authority shall publish an abstract of the accounts, together with any report of the auditor thereon, in some one or more London newspapers.

(5) The remuneration of the auditor shall be such as the Board of Trade direct, and that remuneration and all expenses incurred by him in or about the execution of his duties, to such an amount as the Board of Trade approve, shall be paid by the Port Authority.

**25. Power of Board of Trade to require estimates and audit more than once a year.]** If the Board of Trade at any time consider it desirable that estimates should be submitted, and the accounts of the Port Authority made up and audited, more than once a year, the Board may make an order to that effect, and may by the order make such modifications in the provisions of this Act relating to the submission of estimates and the making up and auditing of the accounts of the Port Authority as may be necessary to give effect to the order.

*Miscellaneous.*

**26. Powers of Port Authority to acquire land, promote Bills, &c.]**—(1) The Port Authority shall, for the purposes of their powers and duties under this Act, or otherwise with respect to the administration, preservation or improvement of the Port of London, have power—

- (a) to manage, alter, remove, or enlarge any building, and to alienate any land or buildings transferred to the Port Authority under this Act or otherwise vested in them; and
- (b) to acquire, hire, erect, and furnish such buildings and offices as they may require; and
- (c) to acquire, purchase, or take on hire, or exchange land; and
- (d) to appoint a clerk or secretary, treasurer, and such other officers as they may require; and
- (e) to promote or oppose any Bill in Parliament, and prosecute or defend legal proceedings.

Provided that nothing in this section shall be construed as conferring on the Port Authority power—

- (i) in the case of any land or buildings transferred to the Port Authority by this Act or otherwise vested in them subject to any right or interest therein of any other person or to the performance of any obligation in force at the date of alienation and to be performed by the Port Authority under any Act, deed, agreement, or other instrument, to alienate such land or buildings otherwise than subject to such right, interest, or obligation; or
- (ii) in the case of land or buildings vested in them subject to any restriction on alienation, to alienate the land or buildings in contravention of that restriction.

(2) For the purposes of this section, sections one hundred and seventy-six and one hundred and seventy-eight of the Public Health Act, 1875 [38 & 39 Vict. c. 55], shall, except so far as they relate to the acquisition of land otherwise than by agreement, apply as if they were herein

re-enacted, with the substitution of the Port Authority for a local authority.

(3) The clerk or secretary of the Port Authority, or any officer or member thereof acting under a general or special resolution of the Port Authority, may authorise the institution and carrying on or the defence of any proceeding which the Port Authority are authorised to institute, carry on, or defend. Any information or complaint under the provisions of this Act or any other Act, whether local or general, applying to the Port Authority, or any bye-laws or regulations made thereunder, may be laid or made by an officer or member of the Port Authority or by the clerk or secretary.

(4) The Superannuation (Metropolis) Act, 1866 [29 & 30 Vict. c. 31], shall apply to the Port Authority as if the Port Authority were an authority mentioned in that Act, and the Port Authority may grant superannuation allowances or pensions to any officers and servants in their employ, either in accordance with that Act as so applied, or by the extension to any such officers and servants of the provisions of any pension scheme to which the authority are a party as successors of any dock company, or by the establishment of any other pension scheme approved by the Board of Trade, and the Port Authority may also promote, assist, or contribute towards the expenses of any institution which appears to the authority to be for the benefit of any such officers or servants either whilst in their employ or after they have ceased to be so, but nothing in this section shall affect the rights of existing officers and servants taken over by the Port Authority under this Act.

**27. Powers of Board of Trade as to conciliation.]**—(1) On complaint being made to the Board of Trade by any person interested that the Port Authority are acting in a manner unfairly oppressive to him by reason of the mode in which they carry on their dock or warehousing business, including charges made in respect of such business, the Board, if they think that there is a reasonable ground of complaint, shall call upon the Port Authority for an explanation and shall endeavour to settle amicably the differences between the complainant and the Port Authority, and shall from time to time submit to Parliament such reports with regard thereto as they think fit.

(2) For the purposes of this section, "person" shall include any association of persons which obtains a certificate from the Board of Trade that it is a proper body to make a complaint.

(3) If the complaint is made on behalf of a trade or a section of a trade by the London Chamber of Commerce or any other representative association interested in the trade of the Port of London which obtains a certificate from the Board of Trade that it is a proper body to make such complaint, or relates to the mode in which the Port Authority carry on their warehousing business, the Board, if they are unable to settle the difference, may, if they think fit, after giving any persons appearing to the Board of Trade to be interested an opportunity of being heard, make such order as in their opinion the circumstances require.

**28. Regulation of engagement of casual labour.]**

(1) The Port Authority shall take into consideration the existing methods and conditions of engagement of workmen employed in dock, riverside, and warehouse labour in connection with the Port of London, and shall, either by themselves or in co-operation with other bodies or persons, by establishing or maintaining or assisting in the establishment or maintenance of offices, waiting-rooms, and employment registers, and by the collection and communication of information and otherwise, take such steps as they think best calculated to diminish the evils of casual employment, and to promote the more convenient and regular engagement of such workmen or any class thereof.

Provided that nothing in this section shall deprive any person of any legal right which he would otherwise possess with regard to the engagement of labour.

(2) The Port Authority may make bye-laws with respect to admission to, and the maintenance of order in, such offices and waiting rooms,

and otherwise for the purpose of carrying this section into effect.

**29. Provision of accommodation for alien passengers.]**—(1) The Port Authority shall, if so required by the Secretary of State, provide and maintain to the satisfaction of the Secretary of State accommodation for the reception of alien passengers conditionally disembarked for the purpose of inspection, appeals, or otherwise, under the Aliens Act, 1905 [5 Edw. 7. c. 13].

(2) On such accommodation being provided, the Port Authority may, with the consent of the Secretary of State, make bye-laws imposing on immigrant ships within the meaning of that Act entering the Port of London tolls in respect of such accommodation, and requiring the conditional disembarkation at the place so provided of such alien passengers from immigrant ships as the Secretary of State may by order direct, either generally or as regards any special ships.

**30. Duty of Port Authority as to surveys.]** The Port Authority shall as soon as may be after the appointed day take into consideration the then existing surveys of the bed and shore of the river and tidal waters within the Port of London, and if in any respect the surveys are defective, they shall, after consultation with the Admiralty and the Board of Trade, take such steps as may be necessary for the purpose of remedying such defects, and the Port Authority shall publish and keep on sale at a reasonable price copies of any such existing surveys as may be considered sufficient and of the surveys so made.

**31. Through rates in respect of dock railways.]**

—(1) Any lines and sidings forming part of any dock undertaking belonging to the Port Authority shall be deemed to be railways, and the Port Authority shall be deemed to be a railway company for the purposes of such of the provisions of the Railway and Canal Traffic Acts, 1854 to 1888, as relate to through rates:

Provided that the Railway and Canal Commission shall not fix such a through rate in any case in which it appears to them that it would be unjust or inexpedient to do so.

(2) The classification of merchandise traffic annexed to the Schedule to the Order confirmed by the Great Eastern Railway Company Rates and Charges Order Confirmation Act, 1891, as from time to time amended in pursuance of subsection (11) of section twenty-four of the Railway and Canal Traffic Act, 1898 [51 & 52 Vict. c. 25], shall apply to the Port Authority in respect of such lines and sidings as aforesaid and the maximum rates and charges which the Port Authority shall be entitled to charge and make in respect of merchandise traffic on those lines and sidings shall be the rates and charges specified in that schedule as so amended.

(3) Nothing in this section shall be construed as entitling the Port Authority to be assessed to any rate or rated on a proportion only of the value of such lines and sidings.

**32. Provisions as to substituted stock.]**—(1) The port stock under this Act substituted for any stock shall be held in the same rights, on the same trusts, and subject to the same powers, provisions, charges, and liabilities as those in, on, or to which the stock was held immediately before the substitution, and so as to give effect to, and not to revoke, any deed, will, or other instrument or testamentary or other disposition disposing of or affecting the stock, and every such deed, will, instrument, or disposition shall take effect with reference to the whole or a proportionate part, as the case may be, of the substituted port stock.

(2) Trustees, executors and all other holders in any representative or fiduciary capacity of any existing stock for which port stock is substituted under this Act shall accept the port stock issued in substitution therefor under this Act, and may hold, dispose of, or otherwise deal with the substituted stock in all respects as they might have held, disposed of, or otherwise dealt with the stock for which it was substituted.

**33. Provision as to provisional orders, &c.]**

(1) The Board of Trade may make such Provisional Orders as may be required for the purposes of this Act, and with respect to such Provisional

Orders the provisions set out in the Fourth Schedule to this Act shall have effect.

(2) Any order, other than a Provisional Order, made by the Board of Trade under this Act shall, whilst in force, have effect as if enacted in this Act, but any such order made by the Board of Trade may be varied by a subsequent order made in the like manner and subject to the like conditions as the original order.

(3) The Board of Trade, subject to the consent of the Treasury, may fix the fees to be payable in respect of Provisional Orders and orders made by the Board under this Act, and such fees shall be paid by such authorities and persons as the Board of Trade may determine.

(4) The Board of Trade may make regulations in relation to applications for Provisional Orders and orders under this Act, and the publication of notices and advertisements and the manner in which and the time within which representations and objections with reference to the application are to be made, and the holding of public inquiries in the cases in which public inquiries are required to be held under this Act and in such other cases as they may think advisable, and to any other matters of procedure respecting the obtaining and granting of Provisional Orders and orders under this Act.

**34. Byelaws.**—(1) The provisions of sections one hundred and ninety-three, one hundred and ninety-four, one hundred and ninety-five, and two hundred of the Thames Conservancy Act, 1894, so far as applied to the Port Authority by this Act, shall, subject to the provisions of the Board of Agriculture and Fisheries Act, 1903 [3 Edw. 7, c. 31], extend to all byelaws made by the Port Authority, whether made in exercise of their powers as successors of the Conservators, or of any dock company, or of the Watermen's Company or the court of that company, or otherwise.

(2) Sections fifty-five and one hundred and ninety-one of the Thames Conservancy Act, 1894, so far as they relate to complaints of the operation of byelaws shall apply to all byelaws made by the Port Authority or their predecessors whether made under that Act or otherwise.

**35. Mutual rights as to inspection of documents.** All minute books, books of accounts, vouchers, maps, plans, and other documents transferred by this Act from the Conservators or the Watermen's Company to the Port Authority shall at all reasonable times be open to the inspection, free of charge, of the Conservators or the Watermen's Company, as the case may be, and all minute books, books of account, vouchers, maps, plans, and other documents belonging to the Conservators or the Watermen's Company and not so transferred shall at all reasonable times be open to the inspection, free of charge, of the Port Authority, and, if any question arises as to whether any such documents are to be transferred to the Port Authority, the question shall be decided by the Board of Trade.

**36. Annual report.** The Port Authority shall make to the Board of Trade an annual report of their proceedings, and this report shall be laid annually before Parliament by the Board of Trade, and shall at the same time be on sale at a reasonable charge to the public at the offices of the Port Authority. The Port Authority shall also give to the Board of Trade such returns, statistics, and information, with respect to the exercise of the powers of the Port Authority, as the Board of Trade may require.

**37. Qualification of justices.** A justice of the peace shall not be incapable of acting in any case in which the Port Authority are a party by reason only that as a payer of dues or the holder of port stock, or as one of any other class of persons, he is liable to contribute to or to be benefited by the port fund.

**38. Provisions as to the Board of Trade.**—(1) The Board of Trade Arbitrations, &c., Act, 1874 [37 & 38 Vict. c. 40], shall apply as if this Act were a special Act within the meaning of the first-mentioned Act, and as if a public inquiry under this Act were an inquiry under that Act.

(2) All things required or authorised under this Act to be done by, to, or before the Board of

Trade, may be done by, to, or before the President or a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board.

(3) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(4) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

**39. Exemption of members of Port Authority from service on juries.** Every member of the Port Authority shall be exempt from serving on any jury.

#### Savings.

**40. Saving of right of authorities to be heard against Bills.** Nothing in this Act shall affect the right of any council or other authority or any person represented on the Port Authority to be heard against any Bill, Provisional Order, or order promoted or applied for by the Port Authority.

**41. Saving for the Customs.**—(1) Nothing in this Act shall affect the limits of the Port of London for Customs purposes, or abridge or affect in any way the powers of the Treasury in respect of the port under the Customs Consolidation Act, 1876.

(2) Sections fourteen and fifteen of the Harbours, Docks, and Piers Clauses Act, 1847 (which relate to the construction and maintenance of works for the accommodation of the officers of Customs) shall apply to the Port Authority in respect of any new docks constructed by them in pursuance of the powers conferred by this Act as if they were incorporated in this Act, and shall also, as from the appointed day, apply to the Port Authority in respect of all docks transferred to the Port Authority by this Act which were constructed in pursuance of any special Act with which those sections are not incorporated—

- (a) as if those sections had been so incorporated; and
- (b) as if any watch-houses, boat-houses, huts or weighing materials provided before the appointed day at those docks by any predecessors of the Port Authority for the accommodation of those officers had been provided in pursuance of the obligation imposed by those sections:

Provided that nothing in this provision shall prejudice or affect any right, or authority, or liability of the Commissioners of Customs, or the Commissioners of Works, under any agreement relating to any such watch-house, boat-house, hut or weighing materials made before the passing of this Act between the Commissioners of Customs, or the Commissioners of Works, and any predecessors of the Port Authority.

**42. Saving for Admiralty.** Nothing in this Act shall prejudice or affect any rights, powers, or privileges of the Admiralty or the King's harbour-master or other officer of the Admiralty within the limits for the time being of any dock-yard port.

**43. Saving for vessels and goods passing through the Port of London.** Nothing in this Act shall be construed as imposing any dues on any vessel or on any goods carried therein by reason only that the vessel passes through any part of the Port of London on a voyage between places situate on the River Medway or the River Swale and not within the Port of London and any other places not within that port, or as imposing any duties of tonnage on any vessel for passengers only plying between places situate on those rivers and places within the Port of London situate eastward of the said line drawn from Yantlet Creek to the City Stone opposite Canvey Island.

**44. Saving in case of damage caused by dredging.**—(1) The Port Authority shall make

compensation to all persons whose property or works are damaged by or in consequence of any operations of the Port Authority in connection with dredging or otherwise deepening and improving the channels of the river within the Port of London, in any case where such persons would have been entitled to damages if the operations had been executed otherwise than in pursuance of statutory powers, and for the purposes of this provision the expression "person" shall include the Crown and any Government Department.

(2) Any works of dredging and deepening carried out under the powers of this Act which are within fifty yards of any part of any property of or under the control of any Government department, or any tunnel, bridge, pier, embankment, water intake, sewage outfall, or other property of the London County Council, or any main or tunnel of the Metropolitan Water Board, shall be executed under the supervision and to the reasonable satisfaction of the department or the engineer of the said Council or Board, as the case may be.

(3) Any works of dredging and deepening carried out under the powers of this Act which are within fifty yards of any part of any bridge belonging to the Corporation or the Essex, Kent, Middlesex or Surrey County Council or any railway company shall be executed under the supervision and to the reasonable satisfaction of the engineer of the Corporation, the County Council, or the Company, as the case may be.

(4) The Port Authority shall not execute or carry out or permit to be carried out any works of excavating, dredging, or deepening, or operations of any kind in the bed or channel of the River Thames so as to injure, endanger, or affect any part of the Thames Tunnel, and, in the event of any injury or damage to the said tunnel being caused directly or indirectly by or resulting from any such works or operations, the Port Authority shall make full compensation to the East London Railway Company and its lessees as owners of the said tunnel in respect thereof.

(5) Any dispute or difference arising under this section shall be settled by an arbitrator appointed by the Board of Trade.

(6) If a complaint is made to the Board of Trade by the councils of not less than three riparian boroughs or urban districts who appear to the Board to be interested, that by reason of the exercise by the Port Authority of their powers of dredging the depth of water in any of the reaches of the Thames within the Port of London above Battersea Bridge has been so diminished as seriously to inconvenience navigation or materially to lower the surface of the water, the Board shall, if they think there is reasonable cause for so doing, hold a local inquiry into the matter and shall from time to time submit to Parliament such reports with regard to any such inquiry and the remedy, if any, which they recommend as they may think fit.

**45. Saving for the borough of Southend-on-Sea.**—(1) Notwithstanding anything contained in this Act, the provisions of sections ninety-three, ninety-four, ninety-nine, one hundred, one hundred and nine to one hundred and seventeen, one hundred and nineteen to one hundred and thirty-four, and so much of sections one hundred and ninety and one hundred and ninety-one as relates to the regulation of bathing and the fixing of the hours during which persons may bathe, of the Thames Conservancy Act, 1894, shall not apply in any area comprised in the borough of Southend-on-Sea or between that borough and a straight line drawn from the West Shoebury buoy to the most easterly point of Canvey Island.

(2) Nothing in this Act or in the Thames Conservancy Act, 1894, shall prejudice, lessen, affect, or interfere with any powers, rights, authorities, privileges, or property of the mayor, aldermen, and burgesses of the borough of Southend-on-Sea under any Act now in force.

(3) Nothing in this section shall be construed as a recognition of any right or interest of the said mayor, aldermen, and burgesses in any part of the bed or shore of the Thames.

**46. Saving for the urban district of Sheerness.** Notwithstanding anything contained in



this Act, the provisions of sections ninety-three, ninety-four, ninety-nine, one hundred, one hundred and nine to one hundred and seventeen, one hundred and nineteen to one hundred and thirty-four, and so much of sections one hundred and ninety and one hundred and ninety-one, as relates to the regulation of bathing and the fixing of hours during which persons may bathe, of the Thames Conservancy Act, 1894, shall not apply in the urban district of Sheerness, including the foreshore opposite that district, nor as respects any part of the bed of the River Thames within one hundred yards from that foreshore.

**47. Saving for the rural district of Sheppey.]** Nothing in this Act shall affect any rights of the rural district of Sheppey existing at the appointed day with regard to the construction of a sewer outfall in that district or the use of such sewer outfall when constructed.

**48. Saving for London, Tilbury, and Southend Railway Company.]** Nothing in this Act shall prejudice, alter, or affect the rights of the London, Tilbury, and Southend Railway Company under any Act of Parliament now in force or under any subsisting agreements or instruments whatsoever made or entered into by the London and India Docks Company or their predecessors in title with the said railway company, but all obligations therein imposed upon the London and India Docks Company or their predecessors in title shall be read and have effect as if the Port Authority were named in such Acts of Parliament, agreements, or instruments instead of the London and India Docks Company or their predecessors in title.

*Definitions, Repeal, &c.*

**49. Definitions.]** In this Act, unless the context otherwise requires,—

The expression "Port of London" means the port within the limits described in the Fifth Schedule to this Act:

The expression "appointed day" means the thirty-first day of March one thousand nine hundred and nine, or such earlier or later day as the Board of Trade may appoint, either generally or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections, and for different companies and authorities:

The expression "undertaking" includes, in the case of an undertaking transferred by this Act, all such property, real and personal, including cash balances, reserve funds, investments, and all other interest and rights in, to, and out of the property, real and personal, and obligations, and things in action, as may be in the possession of the company, or belonging to them, immediately before the date of transfer, and all books, accounts, and documents relating thereto; but discharged and freed from any charge for securing any debenture stock of the company and from any liabilities in respect of such stock:

The expression "the Corporation" means the Mayor, Aldermen, and Commons of the City of London in Common Council assembled:

The expression "the Trinity House" means the master, wardens, and assistants of the guild, fraternity or brotherhood of the most glorious and undivided Trinity, and of St. Clement in the parish of Deptford Strand, in the county of Kent, commonly called the Corporation of the Trinity House of Deptford Strand:

The expression "goods" includes live stock, minerals, and merchandise of all descriptions:

The expression "dues" includes all duties of tonnage, port rates on goods, registration fees, and other tolls, charges, and dues payable to the Port Authority,

whether in respect of ships, goods, river craft, or otherwise:

The expression "vessel" includes ship, boat, lighter, and craft of every kind, and whether navigated by steam or otherwise:

The expression "ship" includes every description of vessel used in navigation not propelled by oars:

The expression "river craft" means any tug, river steamboat, lighter, or barge registered under the Thames Watermen's and Lightermen's Act, 1893, as amended by the Thames Conservancy Act, 1894, and this Act:

The expression "wharfinger" means the occupier of a wharf, quay, warehouse, or granary adjoining the Port of London mainly used for warehousing the goods imported into the Port of London of persons other than the occupier of such premises:

The expression "prescribed" means prescribed by regulations made by the Board of Trade:

The liability of the Millwall Dock Company to the Millwall Dock Equipment Company under an agreement dated the twenty-second day of February one thousand nine hundred and one shall be deemed to be a charge the liability for which is transferred to the Port Authority.

**50. Repeal.]**—The enactments mentioned in the Sixth Schedule to this Act shall as from the appointed day be repealed to the extent specified in the third column to that schedule: Provided that the repeal of the words in section seven of the Thames Conservancy Act, 1905 [5 Edw. 7. c. xcvi.], mentioned in that schedule (which limit the period during which the increased duties of tonnage authorised by that Act may be demanded and received) shall take effect as from the first day of January one thousand nine hundred and nine, and notwithstanding that the powers of the Conservators are not transferred to the Port Authority until a later date.

**51. Short title.]** This Act may be cited as the Port of London Act, 1906.

*Transitory Provisions.*

**52. Adjustment of property and liabilities.]** Such adjustments as may be required for the purposes of this Act shall be made between the Port Authority and the Conservators and between the Port Authority and the Watermen's Company, and section sixty-eight of the Local Government Act, 1894, shall apply to such adjustments in like manner as it applies to adjustments required for the purposes of that Act:

Provided that references to the Board of Trade shall be substituted for references to the Local Government Board, and that the provisions as to borrowing and the application of capital sums shall not apply to the Watermen's Company.

**53. Maintenance of undertakings of dock companies until the appointed day.]**—(1) Until the appointed day the undertakings of the several dock companies shall be maintained and carried on as heretofore in the ordinary course of business in as efficient a condition as usual, but the amount distributed by way of dividend on the stocks other than debenture stocks of any such company for the year one thousand nine hundred and eight or in the case of the Surrey Commercial Dock Company for the last nine months of that year shall not exceed the amount of one year's, or in the case of the Surrey Commercial Dock Company nine months', interest on the amount of the port stock to be substituted under this Act for those stocks.

(2) If the Port Authority think that any contract with respect to any matter connected with the undertaking of any such company made by the company subsequently to the date of the introduction of the Bill for this Act was not reasonably necessary in the ordinary course of the business of the company, they may give notice in writing to the company to that effect within six weeks after the appointed day.

(3) If the Port Authority give any such notice, it shall be referred to an arbitrator appointed by the Board of Trade to determine whether or not the contract was reasonably necessary in the ordinary course of the business of the company, and the arbitrator shall determine whether, and to what extent, as between the Port Authority and the company, any liability arising thereunder is to be transferred to the Port Authority, or is to continue as a liability of the company.

(4) Until the appointed day a dock company shall not, without the previous consent in writing of the Board of Trade—

(a) sell, dispose of, or let for a longer period than one year, any of its lands or buildings;

(b) apply any of its depreciation or renewal funds otherwise than for the purposes for which those funds were created and have hitherto been used, or make any distribution out of any such fund or any reserve for bad and doubtful debts among its stockholders or any class thereof, unless legally compelled to do so for the purpose of paying interest on any debenture stock;

(c) enter into any contract of any kind with shipowners, merchants, or others, extending in date beyond the thirty-first of December one thousand nine hundred and nine;

(d) raise any fresh capital, either directly or, in case of the Millwall Dock Company, indirectly, by means of any arrangement with the Millwall Dock Equipment Company Limited:

(e) undertake any expenditure on any new works.

(5) The accounts and balance sheet of each dock company for the year one thousand nine hundred and eight, and also, if the appointed day is later than the first day of January one thousand nine hundred and nine, for the period between that date and the appointed day, shall be audited by an auditor appointed by the Board of Trade, and no sums shall be distributed by the company by way of dividend except such as are certified by that auditor to be so distributable; and in any case where the audit is not completed until after the appointed day, the Port Authority shall pay to the company such an amount as may be certified by the auditor to be the balance representing profits earned in respect of the period to which the audit relates and available for immediate distribution as dividend: Provided that—

(a) Nothing in this subsection shall be construed as preventing a dock company which has been accustomed to pay interim dividends on any of its stocks and actually paid such dividends in the year one thousand nine hundred and seven from paying such dividends during the year one thousand nine hundred and eight so, however, that the amount paid by way of interim dividend on any such stock shall not exceed the amount of the interest which would accrue during a period equal to that in respect of which the dividend is paid on the amount of port stock which under this Act is to be substituted for that stock; and

(b) the amount paid by the Port Authority to any company under this subsection when added to the amount (if any) paid by the company by way of dividend in respect of any part of the period to which the audit relates shall not exceed the amount of interest which would accrue on the amount of port stock to be issued in substitution for the stocks other than debenture stocks of the company during the like period; and

(c) in the case of the Surrey Commercial Dock Company the amount to be paid to the company in respect of the year one thousand nine hundred and eight shall be such an amount as when added to the amount paid by the company by

way of dividend on its stocks in respect of the last nine months of that year or any part of those nine months may be certified by the auditor to be three-fourths of the balance representing profits earned during that year and available for immediate distribution as dividend; so, however, that those amounts when added together shall not exceed nine months' interest on the amount of port stock to be issued in substitution for the stocks, other than the debenture stock of the company, and the amount so payable shall be paid whether or not the audit of the accounts for that year has been completed before the appointed day.

(6) If the amount certified by the auditor appointed by the Board of Trade as available for distribution as dividend amongst the stockholders of any dock company for the year one thousand nine hundred and eight, or in the case of the Surrey Commercial Dock Company, for the last nine months of that year, when added to the amount (if any) paid by the company by way of dividends in respect of any part of that year, or those nine months, is less than one year's, or nine months', interest on the amount of port stock to be substituted for the various stocks, other than debenture stocks, of the company, the Port Authority shall pay to the company—

- (i.) A sum equal to the deficiency; or
- (ii.) A sum equal to the expense incurred by the company in respect of the negotiations with the Board of Trade for the transfer of its undertaking or in connection with the passing of the Bill for this Act; or
- (iii.) A sum of (a) in the case of the London and India Docks Company five thousand pounds; (b) in the case of the Surrey Commercial Dock Company three thousand pounds; (c) in the case of the Millwall Dock Company two thousand pounds;

whichever of the said sums shall be the least.

(7) Any expenses incurred by the Board of Trade under this section shall be paid by the Port Authority.

**54. Dissolution of dock companies.]—**(1) As soon as the port stock to be issued as compensation for the transfer of the undertaking of a dock company has been issued in accordance with this Act, the company shall enter upon the liquidation of its affairs, and upon the conclusion thereof shall be dissolved in manner provided with respect to the company in the Second Schedule to this Act.

(2) The several provisions and powers contained in the several special Acts of the dock companies shall remain and be of full force as regards the dock companies respectively, so far as the same are necessary or required for the purposes of the company, up to and until the dissolution thereof:

Provided that it shall not be obligatory to fill up any vacancy in the office of director occurring after the passing of this Act, but the continuing directors for the time being of each company may continue in office and exercise all powers of directors up to and until the dissolution of the company.

(3) For the purpose of distributing such port stock as aforesaid and winding up its affairs any such company may, after the appointed day, temporarily retain for its own use such offices, books, accounts, and documents, and the service of such officers and servants, on such terms and conditions as may be agreed upon between the Port Authority and the company, or, failing agreement, may be determined by the Board of Trade.

(4) Any costs, charges, and expenses (including all rents, rates, taxes and other outgoings in respect of any offices, and all salaries, wages, or pay of any officers or servants temporarily retained by a dock company for its own use under the last preceding sub-section) certified by an auditor appointed by the Board of Trade to have been properly incurred by the company for the purposes aforesaid shall be paid to the company by the Port Authority.

**55. Saving for existing watermen and appren-**

**tices.]—**(1) Any person who at the passing of this Act and at the appointed day holds a licence as a licensed lighterman or waterman or qualified apprentice, or a certificate under section three hundred and three of the Thames Conservancy Act, 1894, shall be entitled to receive a licence or certificate from the Port Authority, tenable on the like terms and conditions as the licence or certificate so held.

(2) Nothing in this Act shall vacate or affect any indenture of apprenticeship existing at the passing of this Act.

**56. Temporary advances.]—**(1) With a view of supplying funds to the Port Authority immediately on and for five years after entering on the undertakings of the dock companies the Port Authority may obtain advances of such sums of money as they may require for meeting their obligations and carrying on their business. Provided that the total amount so obtained shall not exceed five hundred thousand pounds, or such larger sum (not exceeding one million pounds) as the Board of Trade may sanction, and the sums so advanced shall be charged on the port fund, but it shall be the duty of the Port Authority to repay any advance obtained under this section, together with all interest thereon, within five years from the date of obtaining the advance.

(2) The provisions of this Act as to borrowing and the repayment of money shall not apply to advances under this section.

**57. Pending proceedings and existing contracts.]—**(1) If on the appointed day any proceeding or any cause of action is pending or existing by or against the Conservators, a dock company, or the Watermen's Company, the same shall not abate, be discontinued, or be in any way prejudicially affected by reason of anything in this Act, but the proceeding or cause of action may be continued, prosecuted, and enforced by or against the Port Authority as it might have been by or against the Conservators or the company if this Act had not been passed, but not further or otherwise.

(2) All contracts, deeds, bonds, agreements, and other instruments, and all working arrangements subsisting immediately before the appointed day, and affecting the Conservators, a dock company, or the Watermen's Company, shall be of as full force and effect against or in favour of the Port Authority, and may be enforced as fully and effectually as if, instead of the Conservators or the company, the Port Authority had been a party thereto:

Provided that—

- (i.) With respect to contracts any liability under which is to remain a liability of a dock company, the provisions of this section shall in all respects be subject to the provisions of the sections of this Act relating to the maintenance of undertakings of dock companies until the appointed day and existing officers and servants, and shall not prejudice any remedy over by the Port Authority against a dock company in respect of any such liability; and
- (ii.) Nothing in this section shall affect any proceeding, cause of action, contract, deed, bond, agreement, or other instrument relating solely to any powers, duties, property, or liabilities of the Conservators or of the Watermen's Company not transferred to the Port Authority by or under this Act.

**58. Saving for existing byelaws, &c.]** All byelaws, rules, regulations, and dues made or enforceable by the Conservators, a dock company, or the Watermen's Company, or the Court of the Watermen's Company, shall, so far as they are not inconsistent with the provisions of this Act, and until repealed, altered, or superseded, remain in force in like manner and to the like extent as if this Act had not been passed:

Provided that any byelaws, rules, regulations, or dues made or imposed in pursuance of any power by this Act transferred from the Conservators or the Watermen's Company or the

Court thereof to the Port Authority, shall, subject to any order made by the Board of Trade, extend throughout the area within which the power in pursuance of which they were made or imposed is for the time being exercisable by the Port Authority.

**59. Compensation to directors of dock companies.]—**(1) The Port Authority shall issue by way of compensation for the loss of office sustained by such of the directors of the several dock companies as were in office both at the date of the publication of the notice of the Bill for this Act and on the appointed day, the following amounts of A port stock:—

- (a) to the London and India Docks Company sixty-seven thousand six hundred pounds;
- (b) to the Surrey Commercial Dock Company forty thousand pounds;
- (c) to the Millwall Dock Company twenty thousand pounds;

and the stock so issued shall be distributed amongst the directors entitled to compensation in such proportions as those directors or a majority of them determine.

(2) If any such director becomes entitled to a salary as chairman, vice-chairman, or chairman of a committee of the Port Authority a sum equal to the amount of the interest on the port stock allotted to him as compensation under this section shall, whilst he holds the office to which the salary is attached, be deducted from the salary which would otherwise be payable to him.

**60. Existing officers and servants.]—**(1) Subject to the provisions of this Act—

- (a) every officer and servant of the Conservators, unless he is immediately before the appointed day employed solely or mainly in connexion with the powers and duties of the Conservators not transferred by this Act to the Port Authority; and
- (b) every officer and servant of the several dock companies; and
- (c) every officer and servant of the Watermen's Company immediately before the appointed day employed solely or mainly in connection with the powers and duties of the Watermen's Company or the court of that company by this Act transferred to the Port Authority,

(all which officers and servants are in this Act referred to as existing officers and servants) shall, as from the appointed day, become an officer or servant of the Port Authority, and shall hold his office or situation by the same tenure and upon like terms and conditions (including all conditions regarding pension or other superannuation allowance), under the Port Authority as he would have held the same under the body from whom he is transferred if this Act had not been passed, and while performing the same duties shall receive not less salary, wages, or pay than he would have been entitled to if this Act had not been passed.

(2) Every existing officer and servant shall perform such duties as he may be required to perform by the Port Authority.

(3) The Port Authority may abolish the office or situation of any existing officer or servant which they deem unnecessary, and any existing officer or servant required to perform duties such as are not analogous, or which are an unreasonable addition to those which as an officer or servant of the body from whom he is transferred he was required to perform, may relinquish his office or service, and every existing officer or servant whose office is so abolished or who so relinquishes his office or service as aforesaid or who otherwise suffers any direct pecuniary loss in consequence of this Act, shall be entitled to be paid by the Port Authority compensation for such pecuniary loss, regard being had to the conditions on which his appointment was made, the nature of his office or employment, the duration of his service, and any other circumstances affecting the case.

(4) Subject to the provisions of this section, the provisions contained in section one hundred and twenty of the Local Government Act, 1888 (51



& 52 Vict. c. 41), relating to compensation to existing officers, shall apply to any claim for compensation by an existing officer or servant, with the substitution of references to the Port Authority and port fund for references to the County Council and county fund.

(5) If within a period of five years after the appointed day the services of any existing officer or servant are dispensed with by the Port Authority because his services are not required, and not on account of misconduct or incapacity, or the salary to any such officer or servant is reduced on the ground that his duties have been diminished in consequence of the provisions of this Act, the officer or servant shall be deemed to have suffered direct pecuniary loss in consequence of this Act.

(6) Any person formerly in the employment of the Conservators, or of any dock company, or the Watermen's Company, who on the appointed day is, though not legally entitled thereto, in receipt of a pension or other superannuation allowance from the Conservators, or any dock company, or the Watermen's Company, shall continue to receive from the Port Authority the same pension or allowance unless he is guilty of grave misconduct, and any question whether he has been guilty of such misconduct shall in case of difference be determined by the Board of Trade.

Provided that this provision shall not apply in the case of a person in receipt of a pension or superannuation allowance from the Conservators or the Watermen's Company unless the employment of the person whilst in the employ of the Conservators or Watermen's Company was of such a nature that, in the opinion of the Board of Trade, he would have been transferred to the Port Authority had he been in that employment at the appointed day.

(7) In computing the time of service of any existing officer or servant for the purpose of determining the compensation to which he is entitled under this section, or of any superannuation or annual allowance that may be awarded him by the Port Authority under the provisions of the Superannuation (Metropolis) Act, 1866 (29 & 30 Vict. c. 31), as applied by this Act, or to which he may be entitled under the London and India Docks Pension Scheme, or the respective schemes of the Surrey Commercial Dock Company or otherwise, the period during which he has been in the service of the Conservators, a dock company, or the Watermen's Company shall be included.

Provided that as respects the officers mentioned in the Seventh Schedule to this Act (being officers who were appointed to their offices as specially qualified persons at an age exceeding that at which public service ordinarily begins) the provisions of this subsection shall apply as modified by that schedule.

(8) Charles James More, the engineer of the Conservators, and Thomas Henry Cullis, the secretary of the Surrey Commercial Dock Company, if they respectively continue to hold those offices till the appointed day, shall on the appointed day be entitled to relinquish their offices and to be paid by the Port Authority a superannuation allowance amounting to two-thirds of the salary payable to them respectively at the date of the introduction of the Bill for this Act.

(9) The liability of the Conservators in respect of any pension or superannuation allowance payable to James Hilditch Gough shall be transferred to the Port Authority.

(10) As respects Joseph Guinness Broadbank, the secretary to the London and India Docks Company, Thomas Hardy, the manager of that company, and Edward Francis Turner, the solicitor to that company, such of the provisions of the agreements made by that company with those officers respectively, the first two dated the eleventh day of February one thousand nine hundred and eight and the third dated the twenty-fourth day of February one thousand nine hundred and three, as determine the rights of those officers in the event of the undertaking of the company being purchased in pursuance of any statutory power (except in the case of the two first-mentioned agreements the provisions of clause six of those agreements) shall

be substituted for the provisions of this section both as to the conditions of employment (if the Port Authority elect to employ them) and compensation, and as respects the said provisions of those agreements the Port Authority shall, except as aforesaid, be subject, to the exclusion of the company, to all the duties, liabilities, and obligations of the company under those agreements in like manner as if they were the company.

(11) Every existing officer or servant not entitled to compensation under this section, and not otherwise legally entitled to any pension or superannuation allowance, who becomes incapable of discharging the duties of his office with efficiency by reason of permanent infirmity of mind or body, or who has attained the age of sixty years, or who having been in the service of the Conservators, or a dock company, or the Watermen's Company for a period of not less than five years, is dismissed by the Port Authority on any ground other than misconduct, shall, upon his resigning or otherwise ceasing to hold office, be entitled to a superannuation allowance upon the terms and conditions and according to the scale specified in the Superannuation (Metropolis) Act, 1866, as applied by this Act.

Provided that this provision shall not apply to any officer or servant who, having regard to the practice of the body from whom he is transferred with regard to pensioning their officers and servants, had no reasonable expectation of receiving a pension or superannuation allowance on retirement had he remained in the service of that body, and any question as to whether an officer or servant had such reasonable expectation shall be finally determined by the Board of Trade.

(12) If the Port Authority think—

(a) that any appointment to any office or service of the Conservators, a dock company, or the Watermen's Company, or any alteration in the rate of salary, wages, or pay of any existing officer or servant, made subsequently to the date of introduction of the Bill for this Act, was not reasonably necessary in the ordinary course of the business of the Conservators or the company; or

(b) that any grant or alteration of a pension or superannuation allowance, or of any right thereto, made by the Conservators, a dock company or the Watermen's Company subsequently to that date was not in accordance with the usual practice of the Conservators or the company with respect to granting or altering pensions or allowances,

the Port Authority may give notice in writing to the Conservators, the dock company or the Watermen's Company to that effect within six weeks after the appointed day, and, if the Port Authority give such a notice, it shall be referred to an arbitrator appointed by the Board of Trade to determine whether or not the appointment, alteration or grant was reasonably necessary in the ordinary course of the business, or was in accordance with the usual practice of the Conservators or the company, and the arbitrator shall determine whether, and to what extent, as between the Port Authority and the Conservators or the company any liability arising in respect thereto is to be transferred to the Port Authority or is to continue as a liability of the Conservators or the Company.

(13) Nothing in this Act shall prejudice or affect the rights or interests of any person who on or immediately before the appointed day is a member of the staff of the London and India Docks Company, or who may or would become or be entitled to a superannuation allowance of and in the pension fund or other fund formed by and under the provision of the indenture and official circular mentioned in Part I. of the Eighth Schedule to this Act; but all the provisions of such deed and official circular in favour of or affecting the members of the staff of the London and India Docks Company, and their wives and families, shall remain in full force and effect, and the Port Authority shall,

as from the appointed day, be entitled to all the benefits and interests, and be subject to all the liabilities of the London and India Docks Company under such indenture and official circular.

(14) Nothing in this Act shall prejudice or affect the rights or interests of any person who on or immediately before the appointed day is a member of the staff of the Surrey Commercial Dock Company, or entitled to a superannuation allowance under the provisions of any of the superannuation deeds mentioned in Part II. of the Eighth Schedule to this Act, or except as otherwise expressly provided by this Act with respect to James Strannach Gaskell and Gilbert William Wheeler under any resolution of the company passed previously to the introduction of the Bill for this Act by which, for the purpose of any pension or superannuation allowance, any number of years has been added to the number of years during which any such person as aforesaid has actually served the company; but all the provisions of any of the said superannuation deeds and resolutions in favour of or affecting any such person as aforesaid shall remain in full force and effect, and the Port Authority shall, as from the appointed day, be entitled to all the benefits and interests and be subject to all the liabilities of the Surrey Commercial Dock Company under the said several superannuation deeds and resolutions.

(15) If any question arises as to whether an officer or servant is transferred to the Port Authority under this section, the question shall be determined by the Board of Trade.

(16) The temporary retention after the appointed day of the services of an officer or servant by any dock company in accordance with the provisions of this Act shall in no wise prejudice or affect his rights under this section.

(17) This section shall, with the necessary adaptations, apply to the officers and servants of the Conservators who are not transferred to the Port Authority in like manner as if the Conservators, as reconstituted by this Act, had been a new authority and those officers and servants had been transferred to that authority.

**61. Amendment of Pilotage Order Confirmation Act, 1896.]** As from the appointed day, and unless and until a Provisional Order under section five hundred and seventy-seven of the Merchant Shipping Act, 1894, dealing with the matter is made and confirmed, a shipowners' representative on the Pilotage Committee of the Trinity House shall, instead of being elected in the manner provided by the Order scheduled to the Pilotage Order Confirmation Act, 1896 (59 & 60 Vict. c. xlvii.), be appointed by the Board of Trade after consultation with the General Shipowners' Society of London and such other persons or bodies having knowledge or experience of shipping in the Port of London as the Board think fit, and the Order scheduled to the Pilotage Order Confirmation Act, 1896, shall be read accordingly as though references to such an appointment were substituted for references to elections by shipowners.

**62. Power of Board of Trade to remove difficulties.]—**(1) If any difficulty arises with respect to the establishment of the Port Authority, or the reconstitution of the Conservators, or to the appointment of the first members, or to the first meeting of the Port Authority, or of the Conservators as reconstituted, the Board of Trade may by order make any appointment or do anything which appears to them to be necessary or expedient for the proper establishment of the Port Authority, or the reconstitution of the Conservators, and the proper holding of the first meeting.

Provided that nothing in this section shall empower the Board of Trade to alter the number of the Conservators or to alter or interfere with the right of any body under this Act to appoint a Conservator or Conservators or the proportion of representation to which any such body is entitled under this Act.

(2) Any such order may modify the provisions of this Act and the Thames Conservancy Act, 1894, so far as may appear to the Board of Trade necessary or expedient for carrying the order into effect.

**68. Costs of Act.]** All costs, charges, and expenses preliminary to and of and incidental to the preparing, applying for, obtaining, and passing of this Act incurred by the Board of Trade shall be repaid to that Board by the Port Authority when established under this Act.

#### SCHEDULES.

##### [Section 1.]

#### FIRST SCHEDULE.

#### CONSTITUTION OF PORT AUTHORITY.

##### PART I.

#### PROVISIONS AS TO PROCEEDINGS AT MEETINGS OF PORT AUTHORITY.

(1) At every meeting of the Port Authority, the chairman, if present, shall preside. If the chairman is absent, the vice-chairman, if present, shall preside. If both the chairman and vice-chairman are absent, such other member as the members then present choose shall preside.

(2) Every question at a meeting of the Port Authority shall be decided by a majority of votes of the members of the Port Authority present and voting on that question, and in the case of equality of votes the person presiding at the meeting shall have a second or casting vote.

(3) The quorum of the Port Authority shall be one-third of the whole number of the Port Authority.

(4) The Port Authority may appoint such and so many committees, either of a general or special nature, and consisting of such number of persons, and either wholly or partly of members of the Port Authority, as they think fit, for any purposes which, in the opinion of the Port Authority would be better regulated and managed by means of committees, and may delegate, with or without any restrictions or conditions, as they may think fit, any of their powers or duties, except any power of raising money, and except any powers of fixing or varying any dues, and except any power of making any application to Parliament or to the Board of Trade in respect of any such dues, to any committee of the Port Authority so appointed, and the provisions of section eighty-two of the Local Government Act, 1888, with respect to proceedings of committees of county councils, shall apply to committees of the Port Authority as if they were committees of a county council: Provided that a majority of the members of every committee shall be members of the Port Authority.

(5) A minute of the proceedings of the Port Authority or of a committee thereof, signed at the same or the next ensuing meeting by a member of the Port Authority or committee describing himself as, or appearing to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(6) Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matter referred to in the minutes.

(7) Subject to the provisions of this Act, the Port Authority may regulate their own procedure.

(8) No act or proceeding of the Port Authority shall be questioned on account of any vacancy in their body, or on account of the election or appointment of any member having been defective.

##### PART II.

#### PROVISIONS AS TO QUALIFICATIONS OF CHAIRMAN, VICE-CHAIRMAN, AND OTHER MEMBERS.

(1) A person shall be disqualified for being appointed or being chairman or vice-chairman, or being elected or appointed or being a member of the Port Authority if he—

(a) is not a British subject resident in the United Kingdom; or

(b) holds any paid office under the Port Authority save as permitted by this Act; or

(c) is concerned in any bargain or contract entered into with the Port Authority, or participates in the profit of any such bargain or contract, or of any work done under the authority of the Port Authority:

Provided that a person shall not be disqualified for being appointed or being chairman or vice-chairman, or being elected or appointed or being a member, by reason of being interested—

(i.) in the sale or lease of any lands, or in any loan of money to the Port Authority, or in any contract with the Port Authority for the supply from land, of which he is owner or occupier, of materials for work being done by or under the authority of the Port Authority; or

(ii.) in any newspaper in which any advertisement relating to the affairs of the Port Authority is inserted; or

(iii.) in any bargain or contract with the Port Authority or made in the ordinary course of the dock or warehousing business of the Port Authority.

(2) A person shall be disqualified for being chairman, vice-chairman or other member of the Port Authority if he is convicted, either on indictment or summarily, of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, or is adjudged bankrupt, or makes a composition or arrangement with his creditors.

(3) If any member of the Port Authority appointed by the London County Council or the Corporation, who at the date of his appointment was a member of the appointing authority, ceases for three months to be a member of that authority, he shall at the end of that period vacate his office as member of the Port Authority, and if any member of the Port Authority appointed by the London County Council or the Corporation who at the date of his appointment was not a member of the appointing authority becomes a member of that authority he shall forthwith vacate his office as member of the Port Authority.

(4) If the chairman, vice-chairman or any other member is absent from meetings of the Port Authority for more than six months consecutively, except for some reason approved by the Port Authority, he shall, on the expiration of those months, vacate his office.

(5) Where the chairman, vice-chairman or other member becomes disqualified for holding office, or vacates his office from absence or otherwise, the Port Authority shall forthwith declare the office to be vacant, and shall notify the fact in such manner as they think fit, and thereupon the office shall become vacant.

##### PART III.

#### PROVISIONS AS TO TENURE OF OFFICE, CASUAL VACANCIES, &c.

(1) Subject to the provisions of this Schedule, the term of office of a member of the Port Authority shall be three years, and the term of office of the chairman and vice-chairman shall be three years.

(2) On the first day of April nineteen hundred and thirteen (and in the case of members appointed by the London County Council nineteen hundred and ten), and on the first day of April in every third year thereafter, all the elected and appointed members of the Port Authority shall go out of office, and their places shall be filled by new elections and new appointments to be held and made at such times as may be fixed by an Order made by the Board of Trade, but a person going out of office may, if otherwise qualified, be re-elected or re-appointed.

(3) The first business at the first meeting of the Port Authority, after the first day of April nineteen hundred and thirteen, and at the first meeting after the first day of April in every third year thereafter, shall be the new appointment of a chairman and vice-chairman, but a person going out of office may, if otherwise

qualified, be re-appointed, and a chairman or vice-chairman shall continue in office until his successor is appointed.

(4) On a casual vacancy occurring in the Port Authority by reason of the death, resignation, disqualification, or absence of a member, or otherwise, the vacancy shall be filled,—

(a) in the case of an elected member, by a member co-opted by the remaining elected members of the Port Authority at a meeting of those members specially summoned for the purpose;

(b) in the case of an appointed member, by a member appointed by the authority by whom the vacating member was appointed;

and the person so co-opted or appointed shall hold office until the time when the person in whose place he is co-opted or appointed would have regularly gone out of office, and shall then go out of his office.

(5) On a vacancy occurring or being about to occur in the office of an appointed member the clerk or secretary of the Port Authority shall immediately give notice to the authority by which the vacancy is to be filled.

(6) On a person being elected or appointed a member, the returning officer or the appointing authority, as the case may be, shall forthwith give notice of the election or appointment to the Port Authority.

(7) The appointment of a member to be chairman or vice-chairman shall not create a casual vacancy.

(8) On a casual vacancy occurring in the office of chairman or vice-chairman of the Port Authority by reason of the death, resignation, disqualification, or absence of the chairman or vice-chairman, or otherwise, the person appointed in his place shall hold office until the time when the person in whose place he is appointed would regularly have gone out of office, and shall then go out of office.

##### PART IV.

#### PROVISIONS AS TO ELECTION OF ELECTED MEMBERS.

(1) Subject to the provisions of this Act, elections of elected members shall be held at such times and in such manner and in accordance with such regulations as the Board of Trade may by order direct; and those regulations may contain all things necessary, preliminary, or incidental to the election.

Provided that, in prescribing the manner in which elections are to be conducted and votes are to be recorded, the Board of Trade shall have regard to the desirability of elections being so conducted and votes being so recorded, whether by allowing the voter to record a vote for a number of candidates in order of preference or otherwise, as to secure that so far as possible the several interests concerned shall be adequately represented on the Port Authority.

(2) The regulations may provide that (subject to duly qualified candidates presenting themselves) the elected members shall include as nearly as may be an equal number of persons whose principal business is or has been mainly connected with vessels and persons whose principal business is or has been mainly connected with goods.

(3) A register shall be formed and revised at such times, in such manner, and in accordance with such regulations as the Board of Trade may by order direct, comprising payers of dues, wharfingers, and owners of river craft.

(4) The register for the time being in force shall be conclusive evidence that the persons named therein and no others are entitled to vote at an election, and that those persons respectively are entitled to the number of votes stated therein.

(5) Subject to the provisions of this Schedule, every person shall be entitled to have his name entered on the register as a payer of dues who is resident in the United Kingdom, and has on his own account during the preceding financial year paid to the Port Authority dues amounting in the aggregate to not less than ten pounds.

(6) Subject to the provisions of this Schedule, every person shall be entitled to have his name entered on the register as a wharfinger who is



resident in the United Kingdom, and was, on the prescribed date, the occupier of a wharf, quay, warehouse, or granary adjoining the Port of London mainly used for warehousing the goods imported into the port of London of persons other than the occupier of such premises, the rateable value of which is not less than fifty pounds.

(7) Subject to the provisions of this Schedule, every person shall be entitled to have his name entered on the register as an owner of river craft who is resident in the United Kingdom and was on the prescribed date the owner of such a craft.

(8) Subject to the provisions of this Schedule, each person whose name is entered on the register shall, at any election of members to be elected by payers of dues, wharfingers, and owners of river craft, be entitled to give one or more votes according to the following scales:—

(a) In the case of a person entered on the register as a payer of dues—

Where the dues amount to	£ 10 but does not amount to	£ 25	Votes, 1
" " 25	" " 50	" " 100	" 2
" " 50	" " 100	" " 200	" 3
" " 100	" " 200	" " 400	" 4
" " 200	" " 400	" " 800	" 5
" " 400	" " 800	" " 1,500	" 6
" " 800	" " 1,500	" " 3,000	" 7
" " 1,500	" " 3,000	" " 5,000	" 8
" " 3,000	" " 5,000		" 9

and for every additional £2,000 over £5,000 one vote, so, however, that the total number of votes to which any one payer of dues is entitled shall not exceed fifty.

(b) In the case of a person entered on the register as a wharfinger—

Where the rateable value of the premises amounts to—

£ 50 but does not amount to	£ 125	Votes, 1
125	" " 250	" 2
250	" " 500	" 3
500	" " 1,000	" 4
1,000	" " 1,500	" 5
1,500	" " 2,000	" 6
2,000	" " 3,000	" 7
3,000	" " 4,000	" 8
4,000	" " 5,000	" 9

Where the rateable value amounts to £5,000 or over, 10 votes.

(c) In the case of a person entered on the register as an owner of river craft.

Where the number of craft owned amounts to—

1 but does not amount to 10	Votes, 1
10	" " 30
30	" " 50
50	" " 100
100	" " 150
150	" " 200
200	" " 300
300	" " 400
400	" " 500

Where the number of craft owned amounts to 500 or over " 10

(9) Subject to the provisions of this Schedule, the persons entitled to vote at an election of a member to be elected by wharfingers shall be the persons entered upon the register as wharfingers and no others, and at such an election each person shall be entitled to give one or more votes according to the scale hereinbefore contained.

(10) Where a wharfinger is the occupier of two or more premises separately assessed, he shall be entitled to be entered on the register and to vote in respect of each of such premises in like manner as if as respects each of such premises he were a separate person.

(11) Where any dues have been paid on account of a company or a firm, or the owners of any ship or river craft who are not partners, or where a company or a firm or an association or body of persons are the occupiers of such a wharf, quay, warehouse, or granary as afore-

said, or where any river craft is owned by a company or a firm or by persons who are not partners, the dues shall be deemed to have been paid on his own account by such one of the directors or officers of the company or partners in the firm or members of the association or body or owners of the ship or river craft or other person as the directors or firm or association or body or owners may appoint in the prescribed manner, and the wharf, quay, warehouse, or granary shall be deemed to be occupied, and the craft owned, by a director or partner or owner or member similarly appointed.

(12) Where a person possesses more than one qualification he shall be entitled to be entered on the register and to vote in respect of each such qualification, in like manner as if as respects each such qualification he were a separate person.

(13) If at any time it appears to the Board of Trade that, as a result of the qualifications and scales of votes fixed by this Schedule the voting power of any voters or class of voters is disproportionate or inadequate having regard to their interest in the Port of London, the Board may by provisional order make such variations in those qualifications or scales of votes as may seem to them to be just, and may provide for different qualifications and different scales of votes for different classes of payers of dues.

(14) All proper expenses of or incidental to the formation or revision of the register, or of or incidental to an election of an elected member shall, subject to any regulations in any order of the Board of Trade made under this Part of this Schedule, be defrayed by the Port Authority.

(15) The Port Authority shall not themselves be entitled to be entered or to appoint any person to be entered, on the register in respect of any qualification possessed by the Port Authority.

(16) Any forms provided or sanctioned by the Port Authority for use in connection with the payment of any dues shall contain a column for the insertion therein of the name and address of the person on whose account the dues are paid:

Where dues paid by any person are paid by him on behalf of any other person and are directly recoverable by him from that other person that other person shall if he so requires

(a) In the case of the London and India Docks Company—

£	For 100 3 per cent. A debenture stock
" 100 3	" B " "
" 100 3	" C " "
" 100 4	" A preference " "
" 100 4	" B " "
" 100	" preferred ordinary stock " "
" 100	" deferred " " "

there shall be substituted

£	100 A Port stock.
100 A	" " "
100 A	" " "
100 B	" " "
100 B	" " "
100 B	" " "
75 B	" " "

(b) In the case of the Surrey Commercial Dock Company—

£	For 100 4½ per cent. debenture stock
" 100 4	" (minimum) A preference stock
" 100 5	" B preference stock
" 100 5	" C " " "
" 100 5	" D " " "
" 100 5	" E " " "
" 100 5	" F " " "
" 100	" ordinary stock " " "

there shall be substituted

£	150 A Port stock.
112 10s. B	Port stock.
125 B	Port stock.
125 B	" " "
125 B	" " "
125 B	" " "
95 B	" " "

(c) In the case of the Millwall Dock Company—

£	For 130 5 per cent. debenture stock
" 100 4	" " " " "
" 100 5	" per cent. preference stock
" 100 4½	" " " " "
" 100 new 5 per cent.	" " " " "
" 100	" ordinary stock " " "

there shall be substituted

£	133 6s. 3d. A Port stock and £25 B Port stock.
100 A	Port stock and £25 B Port stock.
94 B	Port stock.
45 B	" " "
35 B	" " "
24 10s. B	Port stock.

(2) Immediately after the appointed day every holder of debenture or other stock in any dock company shall deliver up to the company the certificates of the stock held by him to be cancelled, and on such delivery the directors of the company shall issue or cause to be issued to each such stockholder in substitution for the stock of the company so held by him the amount of

be entered as the person by whom and on whose account the dues are paid:

Provided that where the owner or master of a ship or a public wharfinger has in pursuance of this Act paid rates on goods on behalf of some other person the rates shall for the purposes of this Schedule be deemed to have been paid by and on account of such other person.

Subject as aforesaid the person by whom the dues are paid shall for the purposes of this Schedule be deemed to be the person on whose account they are paid.

(17) For the purposes of this Schedule "dues" shall not include fees in respect of the registration or licensing of craft and boats, but shall include payments in commutation of dues.

(18) For the purposes of the first election under this Act "dues" shall include dues of such classes and in respect of such services only as may be set forth in a Provisional Order to be made by the Board of Trade.

## PART V.

### PROVISION AS TO FIRST CONSTITUTION AND FIRST MEETING.

(1) The Board of Trade shall take such steps as may be necessary for constituting the Port Authority as soon as may be after the passing of this Act, and for summoning the first meeting of the Port Authority and regulating the proceedings thereat, and all authorities and persons shall comply with any instructions issued by the Board of Trade for that purpose, and any expenses incurred by the Board of Trade for the purpose aforesaid shall be repaid to that Board by the Port Authority when established.

(2) The notice of an appointment of an appointed member required by this Schedule to be given to the Port Authority shall in the case of a first appointment be given to the Board of Trade.

## SECOND SCHEDULE.

[Sections 3, 54.]

(1) The amount of stock to be issued to the several dock companies under this Act, as consideration for their undertakings, shall be distributed amongst the holders of the various classes of stock of the companies at the rates of substitution specified in the following scales:—

£	100 A Port stock.
100 A	" " "
100 A	" " "
100 B	" " "
100 B	" " "
100 B	" " "
75 B	" " "

Port stock to which he is entitled under the foregoing scales:

Provided that the directors shall dispense with such delivery of a certificate if the loss or destruction thereof is proved to the reasonable satisfaction of the directors.

(3) The transfer books of the several dock companies shall be finally closed on such date

previous to the issue of Port stock in substitution for the existing stocks of any such company as the directors of the company may determine, and notice of such closing shall be given by the company to the secretary of the London Stock Exchange, and also by advertisement in two London daily newspapers thirty days before the date on which such transfer books are to be closed, and after the date of closing such transfer books the company may refuse to register any transfer of any of the company's stocks.

(4) The Port Authority shall, if so required by a dock company, before the Port stock to be issued as consideration for the undertaking of the company is issued to the company, instead of issuing to the company the whole of the Port stock to be so issued to it, issue the Port stock to such amounts and to such persons as the company may require, and the issue of Port stock in accordance with such requirements shall, to that extent, discharge the Port Authority of their liability to issue Port stock to the company.

(5) Any money paid to a dock company by the Port Authority under the provisions of this Act shall be applied by the directors towards the payment and discharge of any liability which, under this Act, is to continue as a liability of the company, or is not otherwise provided for, and, subject thereto, shall be distributed amongst the various stockholders of the company in like manner as if it were profits available for immediate distribution as dividend, notwithstanding anything in any special Act relating to the company prescribing the date at which and the period in respect of which dividends on any particular classes of stock of the company may be distributed:

Provided that if authorized so to do by a special resolution of the company, the directors may pay thereout any sum in consideration of loss of office, or in recognition of any services rendered to the company.

(6) Where a dock company is unable after diligent inquiry to find the person to whom any Port stock is issuable or money payable under this schedule, or where any stock is issuable or money is payable to a person who, or whose committee cannot give an effectual receipt for the same, the company may transfer the stock or pay the money, as nearly as may be, in manner provided for payment of money into court by any Act for the time being in force for the relief of trustees, and such Act shall apply with all necessary modifications to such stock and money.

(7) When all Port stock issuable to a dock company has been distributed or paid into court as aforesaid and all such money has been applied and distributed as aforesaid, the company may apply to the Board of Trade, which, if satisfied that the said conditions have been complied with, shall give a certificate to that effect, and upon publication of such certificate in the London Gazette the company shall be dissolved.

(8) The rights conferred by this Act on the holders of the various classes of stocks of a dock company shall be in substitution for the rights conferred on them in the event of the winding-up of the company under the enactments relating to the company:

## THIRD SCHEDULE.

[Section 8.]

PROVISIONS AS TO APPOINTMENT OF  
CONSERVATORS.

(1) The Conservators shall be appointed as follows:—

By the Board of Trade	-	4
By the Port Authority	-	1
By the Metropolitan Water Board	-	2
By the London County Council	-	3
By the Corporation	-	2
By the Gloucestershire and Wiltshire County Councils	-	1
By the Oxfordshire County Council	-	1
By the Berkshire County Council	-	1
By the Buckinghamshire County Council	-	1
By the Surrey County Council	-	1
By the Middlesex County Council	-	1
By the Hertfordshire County Council	-	1
By the Council of the City of Oxford	-	1
By the Council of the Borough of Reading	-	1
By the Council of the Borough of Kingston-upon-Thames	-	1
By the Councils of the Borough of Windsor and the Urban District of Eton	-	1
By the Council of the Borough of Henley-upon-Thames	-	1
By the Councils of the Borough of Maidenhead and the Urban District of Marlow	-	1
By the Councils of the Boroughs of Abingdon and Wallingford	-	1
By the Councils of the Urban Districts of Egham, Staines, Chertsey, Weybridge, Walton, and Sunbury	-	1
By the Councils of the Urban Districts of East and West Molesey, Esher and the Dittons, Surbiton, Hampton, Hampton Wick, and Teddington	-	1

(2) The mode of appointment and qualification of a Conservator appointed by two or more councils, other than the Gloucestershire and Wiltshire County Councils, shall be such as may be prescribed by regulations made by the Board of Trade.

(3) Two of the members appointed by the Board of Trade shall be appointed by the Board after consultation with such persons and associations concerned in the use of the river as a place of recreation as the Board may think fit, and of the remaining two one shall be appointed by the Board after consultation with such persons and associations concerned in the use of the river for the purpose of barge traffic as the Board may think fit.

## FOURTH SCHEDULE.

[Section 33.]

## PROVISIONS AS TO PROVISIONAL ORDERS.

(1) The Board of Trade shall not make any Provisional Order under this Act unless public notice of the purport of the proposed Order has been previously given by advertisement in two successive weeks in some London newspaper.

(2) Before making any such Provisional Order,

the Board of Trade shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which an inquiry is applicable, shall cause to be made an inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections.

(3) A Provisional Order may contain any incidental, consequential, or supplemental provisions which may appear to be necessary or proper for the purposes of the Order.

(4) The Board of Trade may submit to Parliament for confirmation any Provisional Order made by them in pursuance of this Act, but any such Order shall be of no force whatever unless and until it is confirmed by Parliament.

(5) If while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against any Order comprised therein, the Bill, so far as it relates to such Order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(6) Any Act confirming any Provisional Order made in pursuance of this Act, may be repealed, altered, or amended by any Provisional Order made by the Board of Trade and confirmed by Parliament.

(7) The Board of Trade may revoke, either wholly or partially, any Provisional Order made by them before the Order is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the Order is pending in either House of Parliament.

(8) The making of a Provisional Order shall be prima facie evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such Provisional Order have been complied with.

## FIFTH SCHEDULE.

[Section 49.]

## DESCRIPTION OF LIMITS OF THE PORT OF LONDON.

The limits of the Port of London shall commence at an imaginary straight line (in this Act referred to as the landward limit of the port of London) drawn from high-water mark on the bank of the River Thames at the boundary line between the parishes of Teddington and Twickenham in the county of Middlesex to high-water mark on the Surrey bank of the river immediately opposite the first-mentioned point, and extend down both sides of the River Thames to an imaginary straight line (in this Act referred to as the seaward limit of the port of London) drawn from the pilot mark at the entrance of Havengore Creek, in the county of Essex, to the Land's End at Warden Point, in the Isle of Sheppey, in the county of Kent, and shall include all islands, rivers, streams, creeks, waters, watercourses, channels, harbours, docks, and places within the before-mentioned limits contained, and all places which under any Act of Parliament are to be deemed to be within the port of London, but shall not include any part of the River Medway above the seaward limit of the jurisdiction of the conservators of the River Medway, or any part of the River Swale, or any part of the River Lee or Bow Creek within the jurisdiction of the Lee Conservancy Board, or any part of the Grand Junction Canal.

## SIXTH SCHEDULE.

[Section 50.]

## REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal.
22 & 23 Vict. c. cxxxiii.	The Watermen's and Lightermen's Amendment Act, 1859.	Sections four to seven; Section twenty-four; Section twenty-five from "subject to this proviso" to the end of the section; In section twenty-seven the words "to be named by the Conservators of the River Thames"; Sections twenty-nine to forty-one; In section fifty-two the words "subject to an appeal to the Conservators of the River Thames";



Session and Chapter.	Short Title.	Extent of Repeal.
22 & 23 Vict. c. cxxxiii.	The Watermen's and Lightermen's Amendment Act, 1859.	In section fifty-four the words "a freeman" where they first occur, and the words "or an apprentice qualified according to this Act to a freeman or to the widow of a freeman of the said Company"; Sections sixty-one to sixty-three; In section sixty-four the words from "and subject to an appeal" to "of the said court"; Section sixty-eight; In section seventy-one the words "with the sanction of the Conservators of the River Thames"; the words "and with the like sanction"; and from "Provided always," to the end of the section. In section eighty the words from "or with any of the byelaws" to "Conservancy of the River Thames," and from "Provided always" to the end of the section; Sections eighty-one to eighty-three; In section eighty-four the words "to work, row, or navigate any barge, lighter, boat, or other vessel, or"; Section eighty-six; Section eighty-seven; In section eighty-eight the words "freeman, apprentice, or"; Section eighty-nine; In section ninety the words "at their Hall," and the words "and shall be paid and distributed to the poor, aged, and decayed freemen of the said company and their widows," and the words "Master, wardens, or assistants" when ever they occur; Sections ninety-one to ninety-three; Sections ninety-eight, one hundred, one hundred and one, and one hundred and three.
56 & 57 Vict. c. lxxxi.	The Thames Watermen's and Lightermen's Act, 1893.	In section three the definitions of "craft" and "boat"; In section sixteen the words "in a summary manner" and "in the place where is the principal waterside place of business of such owner." Section twenty-two; Section twenty-nine from "And all the provisions" to the end of the section; In section thirty the words "unless otherwise by this Act directed"; Sections thirty-three, thirty-six, and thirty-seven.
57 & 58 Vict. c. clxxxvii.	The Thames Conservancy Act, 1894.	In section three the definition of the Port of London; Sections six to nine and eleven to twenty-seven. In sub-section (1) of section twenty-eight, paragraphs (A), (B), (F), and (G), and in paragraph (E) the word "county," and in paragraph (A) of sub-section (2) of the same section the words "a member of the Trinity House or a member of the Common Council or," the word "county," where it secondly occurs, and the words "or a member of the board of directors or other governing body of a company or other body corporate." In section twenty-nine, sub-section (2), from "in the case of a vacancy" to "in all other cases," sub-section (3), sub-section (5) from "or elected" to the end of the sub-section, and sub-section (6); In section thirty, the words "the Admiralty," "the Trinity House," "the Common Council," wherever they occur, "county," where it secondly and fourthly occurs, "or the metropolitan water companies or elected by the shipowners," and "or elected," and from "And provided that a conservator" to the end of the section. In section thirty-one, the words "or re-elected." In section thirty-two, the words "by the Admiralty or," "or by the Trinity House, or by the Common Council" "county," where it secondly and fourthly occurs, "by the Secretary to the Admiralty or," and "or by the Secretary of the Trinity House, or by the Town Clerk of the City of London." In section eighty-three the proviso to sub-section (1). Section one hundred and thirty-four; In section one hundred and fifty-five, the words "All vessels for passengers only." In section one hundred and ninety-one, the words "For regulating the mode of conducting elections of conservators under this Act." Sections two hundred and forty, two hundred and forty-two, and two hundred and forty-three, sub-section (1) of section two hundred and fifty-three, sub-section (1) of section two hundred and fifty-nine, sub-section (1) of section two hundred and eighty-six, and sub-section (1) of section two hundred and eighty-seven; and in sub-section (2) of the last mentioned section paragraph (A) and in paragraph (B) the words "one fourth of." In section three hundred and two the words "and shall be entered into, executed at Waterman's Hall." Section three hundred and three, from "and in case," to the end of the section. In section three hundred and four, the words "and subject to the like appeal." Section three hundred and six. In section three hundred and seven the words "being a freeman of the company or," "as the case may be" and "admitted a freeman of the company or." Section three hundred and nine. Section three hundred and ten. Section three hundred and twelve. The Second Schedule. The Third Schedule.
2 Edw. 7, c. 41	The Metropolis Water Act, 1902	In the Third Schedule the paragraph numbered 5.
5 Edw. 7, c. cxcviii.	The Thames Conservancy Act, 1905.	Section four. In section seven the words "For a period of three years from the first day of January 1906."

## SEVENTH SCHEDULE.

[Section 60.]

## OFFICERS ENTITLED TO SPECIAL TERMS.

In respect of the following officers there shall be added to the number of years during which they have respectively actually served such number of years not exceeding twenty as the Port Authority, or on appeal, the Treasury, may think just; but the number of years so added in the case of any such officer shall not be less than will be sufficient to secure to the officer compensation or a superannuation allowance equal to one-half of the total annual emoluments which he is entitled to receive from the Port Authority at the date when his office is abolished or relinquished by him or his services are dispensed with under the provisions of this Act, or when he becomes entitled to a superannuation allowance on retirement or otherwise, as the case may be:—

Robert Philipson, secretary of the Conservators:

William Berrell, assistant engineer of the Conservators:

James Stranach Gaskell, chief engineer of the Surrey Commercial Dock Company:

Gilbert William Wheeler, assistant secretary of the Surrey Commercial Dock Company:

Walter Seth Tasker Biggs, secretary and joint manager of the Millwall Dock Company:

George Hazlehurst, superintendent and joint manager of the Millwall Dock Company:

Louis Stephen White, clerk to the Watermen's Company:

Provided that—

(a) In the case of the said James Stranach Gaskell and Gilbert William Wheeler the number of years to be added if they so elect shall in lieu of such number as aforesaid be the number of years added for the purposes of pension, under resolutions passed by the Surrey Commercial Dock Company, dated the twenty-third day of April one thousand nine hundred and three, and the twenty-sixth day of March one thousand nine hundred and eight respectively; and

(b) In the case of the said Walter Seth Tasker Biggs the emoluments to which he was entitled at the date of the introduction of the Bill for this Act as secretary of the Millwall Dock Equipment Company shall, in the event of that Company being wound up on the redemption and payment off of its stocks by the Port Authority, be treated for the purposes of compensation and pension as part of the emoluments of his office under the Millwall Dock Company.

An appeal to the Treasury under this schedule shall not be made after the expiration of three months from the decision of the Port Authority.

## EIGHTH SCHEDULE.

[Section 60.]

## PART I.

Indenture dated the seventeenth day of September one thousand eight hundred and ninety and made between the London and India Docks Joint Committee of the first part, Henry Willey Williams, and Edward Henry Baily of Dock House, Leadenhall Street, London, joint managers of the London and India Docks Joint Committee, and others of the second part, and Rodolph Alexander Hankey of No. 7 Mincing Lane, and others of the third part.

Official Circular issued by order of the directors of the London and India Docks Company and dated the fifteenth day of June one thousand nine hundred and seven relating to an improved scheme of grants payable at the death of officers and servants of that Company while in active service or after retirement on pension.

## PART II.

- (1) Indenture dated the fifteenth day of August one thousand eight hundred and ninety (being the original superannuation deed of the Surrey Commercial Dock Company):
- (2) Indenture dated the tenth day of December one thousand eight hundred and ninety-one:
- (3) Indenture dated the first day of December one thousand eight hundred and ninety-two:
- (4) Indenture dated the thirtieth day of April one thousand eight hundred and ninety-six:
- (5) Indenture dated the eleventh day of February one thousand eight hundred and ninety-seven:
- (6) Indenture dated the seventh day of August one thousand nine hundred and three (the five last-mentioned Indentures being all supplemental to the first-mentioned Indenture):
- (7) Another Indenture dated the seventh day of August one thousand nine hundred and three (being the new superannuation deed of the Surrey Commercial Dock Company):
- (8) Indenture dated the eighteenth day of June one thousand nine hundred and eight supplemental to the last-mentioned Indenture.

## CHAPTER 69.

[Companies Consolidation Act, 1908.]

An Act to consolidate the Companies Act, 1862, and the Acts amending it.

[21st December 1908.]

Be it enacted &c.:

## PART I.

## CONSTITUTION AND INCORPORATION.

## Prohibition of Large Partnerships.

1. *Prohibition of partnerships exceeding certain number.*—(1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.

(2) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

## Memorandum of Association.

2. *Mode of forming incorporated company.* Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Act, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

- (i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- (ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

3. *Memorandum of company limited by shares.* In the case of a company limited by shares—

- (1) The memorandum must state—
  - (i) The name of the company, with "Limited" as the last word in its name;
  - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
  - (iii) The objects of the company;
  - (iv) That the liability of the members is limited;
  - (v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount;
- (2) No subscriber of the memorandum may take less than one share;
- (3) Each subscriber must write opposite to his name the number of shares he takes.

4. *Memorandum of company limited by guarantee.* In the case of a company limited by guarantee—

- (1) The memorandum must state—
  - (i) The name of the company, with "Limited" as the last word in its name;
  - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
  - (iii) The objects of the company;
  - (iv) That the liability of the members is limited;
  - (v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (2) If the company has a share capital—
  - (i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
  - (ii) No subscriber of the memorandum may take less than one share;
  - (iii) Each subscriber must write opposite to his name the number of shares he takes.

5. *Memorandum of unlimited company.* In the case of an unlimited company—

- (1) The memorandum must state—
  - (i) The name of the company;
  - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
  - (iii) The objects of the company.
- (2) If the company has a share capital—
  - (i) No subscriber of the memorandum may take less than one share;
  - (ii) Each subscriber must write opposite to his name the number of shares he takes.

6. *Stamp and signature of memorandum.* The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

7. *Restriction on alteration of memorandum.* A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

8. *Name of company and change of name.*—(1) A company may not be registered by a name identical with that by which a com-



pany in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(3) Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.

(4) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

9. *Alteration of objects of company.*—(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its main purpose by new or improved means; or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and
- (b) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the court.

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen

days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

#### Articles of Association.

10. *Registration of articles.*—(1) There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A. in the First Schedule to this Act.

(3) In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

11. *Application of Table A.*—In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A. in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

12. *Form, stamp, and signature of articles.*—Articles must—

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) bear the same stamp as if they were contained in a deed; and
- (d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

13. *Alteration of articles by special resolution.*—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

#### General Provisions.

14. *Effect of memorandum and articles.*—(1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each

member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England and Ireland be of the nature of a specialty debt.

15. *Registration of memorandum and articles.*—The memorandum and the articles (if any) shall be delivered to the registrar of companies for that part of the United Kingdom in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

16. *Effect of registration.*—(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of the incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

17. *Conclusiveness of certificate of incorporation.*—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor of the High Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

18. *Copies of memorandum and articles to be given to members.*—(1) Every company shall send to every member, at his request, and on payment of one shilling or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding one pound.

#### Associations not for Profit.

19. *Restriction on charitable and other companies holding land.*—A company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land; but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

20. *Power to dispense with "Limited" in name of charitable and other companies.*—(1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the registrar of companies.

(4) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before a licence is so revoked the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

#### *Companies limited by Guarantee.*

**21. Provision as to companies limited by guarantee.**—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the first day of January, nineteen hundred and one, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

#### **PART II.**

#### **DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.**

##### *Distribution of Share Capital.*

**22. Nature of shares.**—(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

**23. Certificate of shares or stock.**—A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock.

**24. Definition of member.**—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

**25. Register of members.**—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

- (i.) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

- (ii.) The date at which each person was entered in the register as a member;

- (iii.) The date at which any person ceased to be a member.

(2) If a company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

#### **26. Annual list of members and summary.**—

(1) Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

- (a) The amount of the share capital of the company, and the number of the shares into which it is divided;
- (b) The number of shares taken from the commencement of the company up to the date of the return;
- (c) The amount called up on each share;
- (d) The total amount of calls received;
- (e) The total amount of calls unpaid;
- (f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;
- (g) The total number of shares forfeited;
- (h) The total amount of shares or stock for which share warrants are outstanding at the date of the return;
- (i) The total amount of share warrants issued and surrendered respectively since the date of the last return;
- (k) The number of shares or amount of stock comprised in each share warrant;
- (l) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called; and
- (m) The total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight.

(3) The summary must also (except where the company is a private company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss.

(4) The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the com-

pany must forthwith forward to the registrar of companies a copy signed by the manager or by the secretary of the company.

(5) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

**27. Trusts not to be entered on register.**—[No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England or Ireland.

**28. Registration of transfer at request of transferor.**—[On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

**29. Transfer by personal representative.**—[A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

**30. Inspection of register of members.**—(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and, as respects companies registered in England or Ireland, any judge of the High Court, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

**31. Power to close register.**—[A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

**32. Power of court to rectify register.**—(1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The application may be made, as respects companies registered in England or Ireland, by motion in the High Court, or by application to a judge of the High Court sitting in chambers, or by application to the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, and, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other



manner as the said courts may respectively direct; and the court may either refuse the application, or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved.

(3) On any application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

**33. Register to be evidence.]** The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

**34. Power for company to keep colonial register.]**—(1) A company having a share capital, whose objects comprise the transaction of business in a colony, may, if so authorised by its articles, cause to be kept in any colony in which it transacts business a branch register of members resident in that colony (in this Act called a colonial register).

(2) The company shall give to the registrar of companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3) For the purpose of the provisions of this Act relating to colonial registers the term "colony" includes British India and the Commonwealth of Australia.

**35. Regulations as to colonial register.]**—(1) A colonial register shall be deemed to be part of the company's register of members (in this and the next following section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent court in the colony may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the High Court, and that the offences of refusing inspection of copies of a colonial register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction.

(3) The company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its colonial register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the principal register.

(6) Subject to the provision of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of colonial registers.

**36. Stamp duties in case of shares registered in colonial registers.]** In relation to stamp duties the following provisions shall have effect:—

(a) An instrument of transfer of a share registered in a colonial register shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from British stamp duty:

(b) On the death of a member registered in a colonial register, the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far as relates to British duties, to be part of his estate and effects situate in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register.

**37. Issue and effect of share warrants to bearer.]**—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

(3) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

(5) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:

- (i) The fact of the issue of the warrant;
- (ii) A statement of the shares or stock included in the warrant, distinguishing each share by its number; and
- (iii) The date of the issue of the warrant.

(6) Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

**38. Forgery, personation, unlawfully engraving plates, &c.]**—(1) If any person—

- (i) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or
- (ii) falsely and deceitfully personates any owner of any share or interest in any

company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner,

he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or of any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

**39. Power of company to arrange for different amounts being paid on shares.]** A company, if so authorised by its articles, may do any one or more of the following things; namely,—

- (1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (2) Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

**40. Power to return accumulated profits in reduction of paid-up share capital.]**—(1) When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

(2) The resolution shall not take effect until a memorandum, showing the particulars required by this Act in the case of a reduction of share capital, has been produced to and registered by the registrar of companies, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section.

(3) On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorised for investment by trustees as the company may determine, and on the money so invested, or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.

(6) After any reduction of share capital under this section the company shall specify in the annual list of member required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

**41. Power of company limited by shares to alter its share capital.**—(1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

- (a) increase its share capital by the issue of new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section with respect to sub-division of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

If a company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(4) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

**42. Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.]** Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the registrar of companies of the consolidation, division, conversion, or reconversion specifying the shares consolidated, divided, or converted, or the stock reconverted.

**43. Effect of conversion of shares into stock.]** Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar of companies, all the provisions of this Act which are applicable to share only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the regis-

trar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

**44. Notice of increase of share capital or of members.]**—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the registrar of companies, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

**45. Reorganisation of share capital.]**—(1) A company limited by shares may, by special resolution confirmed by an order of the court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the court may allow, and the resolution shall not take effect until such a copy has been so filed.

#### Reduction of Share Capital.

**46. Special resolution for reduction of share capital.]**—(1) Subject to confirmation by the court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

- (a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

**47. Application to court for confirming order.]** Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction.

**48. Addition to name of company of "and reduced."]** On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and

from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company:

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

**49. Objections by creditors, and settlement of list of objecting creditors.]**—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount; (that is to say)—

- (i) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

**50. Order confirming reduction.]** The court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

**51. Registration of order and minute of reduction.]**—(1) The registrar of companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

**52. Minute to form part of memorandum.]**—(1) The minute when registered shall be deemed to be



substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

**53. Liability of members in respect of reduced shares.]** A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

- (i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and
- (ii) if the company is wound up, the court, on the application of any such creditor, and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

Nothing in this section shall affect the rights of the contributories among themselves.

**54. Penalty on concealment of name of creditor.]** If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

**55. Publication of reasons for reduction.]** In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information in regard thereto as the court may think expedient with a view to give proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

**56. Increase and reduction of share capital in case of a company limited by guarantee having a share capital.]** A company limited by guarantee and registered on or after the first day of January nineteen hundred and one, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

**Registration of Unlimited Company as Limited.**

**57. Registration of unlimited company as limited.]—(1)** Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company, may re-register under this Act, but the registra-

tion of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part VII. of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

**58. Power of unlimited company to provide for reserve share capital on re-registration.]** An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely:—

- (a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

**Reserve Liability of Limited Company.**

**59. Reserve liability of limited company.]** A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

**Unlimited Liability of Directors.**

**60. Limited company may have directors with unlimited liability.]—(1)** In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

**61. Special resolution of limited company making liability of directors unlimited.]—(1)** A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.

(2) Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the

memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

### PART III.

#### MANAGEMENT AND ADMINISTRATION.

##### Office and Name.

**62. Registered office of company.]—(1)** Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the registrar of companies, who shall record the same.

(3) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which it so carries on business.

**63. Publication of name by a limited company.]—(1)** Every limited company—

- (a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
- (b) shall have its name engraved in legible characters on its seal;
- (c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding five pounds for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(3) If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

##### Meetings and Proceedings.

**64. Annual general meeting.]—(1)** A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

**65. First statutory meeting of company.]**

—(1) Every company limited by shares and registered on or after the first day of January nineteen hundred and one shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(d) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the court in

manner provided by Part IV. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

**66. Convening of extraordinary general meeting on requisition.]—**(1) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

**67. Provisions as to meetings and votes.]** In default of, and subject to, any regulations in the articles—

(i) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A. in the First Schedule to this Act;

(ii) Five members may call a meeting;

(iii) Any person elected by the members present at a meeting may be chairman thereof;

(iv) Every member shall have one vote.

**68. Representation of companies at meetings of other companies of which they are members.]** A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

**69. Definitions of extraordinary and special resolution.]—**(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been—

(a) passed in manner required for the passing of an extraordinary resolution; and

(b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not

less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

**70. Registration and copies of special resolutions.]—**(1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

**71. Minutes of proceedings of meetings and directors.]—**(1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

**Appointment, Qualification, &c., of Directors.**

**72. Restrictions on appointment or advertisement of director.]—**(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a



director or proposed director of a company in any prospectus issued by or on behalf of the company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

- (i) Signed and filed with the registrar of companies a consent in writing to act as such director; and
- (ii) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

**73. Qualification of director.]—**(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2) The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

**74. Validity of acts of directors.]** The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

**75. List of directors to be sent to registrar.]—**(1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the registrar of companies a copy thereof, and from time to time notify to the registrar any change among its directors or managers.

(2) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

*Contracts, &c.*

**76. Form of contracts.]—**(1) Contracts on behalf of a company may be made as follows (that is to say):—

- (i) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged;
- (ii) Any contract which if made between private persons would be by law required to be in writing, signed by the

parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged:

- (iii) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators as the case may be.

(3) Any deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in terms of the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be equally binding whether attested by witnesses or not.

**77. Bills of exchange and promissory notes.]** A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

**78. Execution of deeds abroad.]** A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal.

**79. Power for company to have official seal for use abroad.]—**(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place not situate in the United Kingdom, to affix the same to any deed or other document to which the company is party in that territory, district, or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

*Prospectus.*

**80. Filing of prospectus.]—**(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar of companies on or

before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

**81. Specific requirements as to particulars of prospectus.]—**(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

- (a) the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and
- (b) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and
- (c) the names, descriptions, and addresses of the directors or proposed directors; and
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and
- (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and
- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and
- (g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and
- (h) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any

shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

- (i) the amount or estimated amount of preliminary expenses; and
- (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and
- (k) the dates of any parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and
- (l) the names and addresses of the auditors (if any) of the company; and
- (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and

- (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company in any case where—

- (a) the purchase money is not fully paid at the date of issue of the prospectus; or
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

- (a) as regards any matter not disclosed, he was not cognizant thereof; or
- (b) the non-compliance arose from an honest mistake of fact on his part:

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of subsection (1) of this section no director

or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the memorandum and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

**83. Obligations of companies where no prospectus is issued.**—(1) A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar of companies a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule to this Act.

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

**83. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.**—A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

**84. Liability for statements in prospectus.**—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

- (a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
- (b) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation. Provided that the director, person named as director, promoter, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person

making the statement, report, or valuation was competent to make it; and

- (c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document:

or unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing on the eighteenth day of August one thousand eight hundred and ninety has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures, issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

**Allotment.**

**85. Restriction as to allotment.**—(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely:—

- (a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,



has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say):—

(a) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

This sub-section shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

**86. Effect of irregular allotment.]—**(1) An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of the last foregoing section with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

**87. Restrictions on commencement of business.]—**(1) A company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for

public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and

(c) there has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and

(d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.

(2) The registrar of companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercise borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the first day of January nineteen hundred and one, or to a company registered before the first day of July nineteen hundred and eight which does not issue a prospectus inviting the public to subscribe for its shares.

**88. Return as to allotments.]—**(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar of companies—

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the registrar of companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891 (54 & 55 Vict. c. 39), and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the com-

pany, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that, in case of default in filing with the registrar of companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

#### Commissions and Discounts.

**89. Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.]—**(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(a) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(b) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar of companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

**90. Statement in balance sheet as to commissions and discounts.]** Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

#### Payment of Interest out of Capital.

**91. Power of company to pay interest out of capital in certain cases.]** Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest

on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

- (1) No such payment shall be made unless the same is authorised by the articles or by special resolution:
- (2) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade:
- (3) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry:
- (4) The payment shall be made only for such period as may be determined by the Board of Trade; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided:
- (5) The rate of interest shall in no case exceed four per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council:
- (6) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid:
- (7) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate:
- (8) Nothing in this section shall affect any company to which the Indian Railways Act, 1894 (57 & 58 Vict. c. 12), as amended by any subsequent enactment, applies.

#### *Certificates of Shares, &c.*

#### **92. Limitation of time for issue of certificates.]**

—(1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding five pounds for every day during which the default continues.

#### *Information as to Mortgages, Charges, &c.*

**93. Registration of mortgages and charges in England and Ireland.]**—(1) Every mortgage or charge created after the first day of July nineteen hundred and eight by a company registered in England or Ireland and being either—

- (a) a mortgage or charge for the purpose of securing any issue of debentures; or
- (b) a mortgage or charge on uncalled share capital of the company; or
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
- (d) a mortgage or charge on any land, wherever situate, or any interest therein; or
- (e) a mortgage or charge on any "book debts of the company; or
- (f) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be

void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable:

Provided that—

- (i) in the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and
  - (ii) where the mortgage or charge is created in the United Kingdom, but comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and
  - (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and
  - (iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.
- (2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of

the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered:

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(8) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

#### **94. Registration of enforcement of security.]**

(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

**95. Filing of accounts of receivers and managers.]**—(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also



on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

**96. Rectification of register of mortgages.]** A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified.

**97. Entry of satisfaction.]** The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

**98. Index to register of mortgages and charges.]** The registrar of companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

**99. Penalties.]—(1)** If any company makes default in sending to the registrar of companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

**100. Company's register of mortgages.]—(1)** Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

**101. Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.]—(1)** The copies of instru-

ments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in England or Ireland, any judge of the High Court sitting in chambers, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register.

**102. Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.]—(1)** Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

#### Debentures and Floating Charges.

**103. Perpetual debentures.]** A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

**104. Power to re-issue redeemed debentures in certain cases.]—(1)** Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and when a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always

to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

(a) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March nineteen hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or

(b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

**105. Specific performance of contract to subscribe for debentures.]** A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

**106. Validity of debentures to bearer in Scotland.]** Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms.

**107. Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.]—(1)** Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

*Statement to be published by Banking and certain other Companies.*

108. *Certain companies to publish statement in schedule.*—(1) Every company being a limited banking company or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked C. in the First Schedule to this Act, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6) This section shall not apply to any life assurance company nor any other assurance company to which the provisions of the Life Assurance Companies Acts, 1870 to 1872 [33 & 34 Vict. c. 61. 34 & 35 Vict. c. 58. 35 & 36 Vict. c. 41], as to the annual statements to be made by such a company, apply with or without modifications, if the company complies with those provisions.

#### *Inspection and Audit.*

109. *Investigation of affairs of company by Board of Trade inspectors.*—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct—

(i) In the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued;

(ii) In the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(iii) In the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation; and the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding five pounds in respect of each offence.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

(7) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Board of Trade direct the same to be paid by the company, which the Board is hereby authorised to do.

110. *Power of company to appoint inspectors.*—(1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade.

111. *Report of inspectors to be evidence.*—A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

112. *Appointment and remuneration of auditors.*—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting.

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

113. *Powers and duties of auditors.*—(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation

as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(a) Whether or not they have obtained all the information and explanations they have required; and

(b) Whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

(5) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine—

(a) If the company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the United Kingdom; and

(b) the balance sheet must be signed by the secretary or manager (if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

114. *Rights of preference shareholders, &c., as to receipt and inspection of reports, &c.*—(1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the first day of July, nineteen hundred and eight.

#### *Carrying on Business with less than the legal Minimum of Members.*

115. *Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.*—If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same, without joinder in the action of any other member.



*Service and Authentication of Documents.*

**116. Service of documents on company.]** A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

**117. Authentication of documents.]** A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

*Tables and Forms.*

**118. Application and alteration of tables and forms.]—(1)** The forms in the Third Schedule to this Act or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Board of Trade may alter any of the tables and forms in the First Schedule to this Act, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and may alter or add to the forms in the said Third Schedule.

(3) Any such table or form, when altered, shall be published in the London Gazette, and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A. in the said First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

*Arbitrations.*

**119. Arbitration between companies and others.]—(1)** A company may by writing under its common seal agree to refer and may refer to arbitration, in accordance with the Railway Companies Arbitration Act, 1859 [22 & 23 Vict. c. 59.], any existing or future difference between itself and any other company or person.

(2) Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) All the provisions of the Railway Companies Arbitration Act, 1859, shall apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of those provisions "the companies" shall include companies under this Act.

*Power to Compromise.*

**120. Power to compromise with creditors and members.]—(1)** Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) In this section the expression "company" means any company liable to be wound up under this Act.

*Meaning of "Private Company."*

**121. Meaning of "private company.]"—(1)** For the purposes of this Act the expression "private company" means a company which by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the registrar of companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(3) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

**PART IV.**

**WINDING UP.**

*Preliminaries.*

**122. Modes of winding up.]—(1)** The winding up of a company may be either—

(i) by the court; or

(ii) voluntary; or

(iii) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

*Contributories.*

**123. Liability as contributories of present and past members.]—(1)** In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—

(i) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(iii) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(vi) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(vii) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for

the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: Provided that—

(i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(iii) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

**124. Definition of contributory.]** The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

**125. Nature of liability of contributory.]** The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

**126. Contributories in case of death of member.]—(1)** If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereof of the money due.

**127. Contributories in case of bankruptcy of member.]** If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

**128. Provision as to married women.**—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882 [45 & 46 Vict. c. 15], or the Married Women's Property (Scotland) Act, 1881 [44 & 45 Vict. c. 21], as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

#### Winding up by Court.

**129. Circumstances in which company may be wound up by court.**—[A company may be wound up by the court—

- (i) if the company has by special resolution resolved that the company be wound up by the court;
- (ii) if default is made in filing the statutory report or in holding the statutory meeting;
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;
- (v) if the company is unable to pay its debts;
- (vi) if the court is of opinion that it is just and equitable that the company should be wound up.

**130. Company when deemed unable to pay its debts.**—[A company shall be deemed to be unable to pay its debts—

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (ii) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (iii) if, in Scotland, the inducible of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or
- (iv) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

**131. Jurisdiction to wind up companies in England.**—(1) The courts having jurisdiction to wind up companies registered in England shall be the High Court, the Chancery Courts of the Counties Palatine of Lancaster and Durham, and the county courts.

(2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the

jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.

(4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company, and wherever the registered office of the company is situate.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890 [53 & 54 Vict. c. 63].

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896 [59 & 60 Vict. c. 45].

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

**132. Conduct of winding-up business in High Court in England.**—[Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873 [36 & 37 Vict. c. 66], and the Acts amending it, the jurisdiction to wind up companies of the High Court in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

**133. Transfer of proceedings.**—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding-up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to

the High Court for the purposes of the determination.

**134. Jurisdiction to wind up companies in Ireland.**—[The court having jurisdiction to wind up companies registered in Ireland shall be the High Court:

Provided that where the High Court in Ireland makes an order for winding up a company it may, if it thinks fit, direct that all subsequent proceedings in the winding up be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings shall be taken in that court of bankruptcy accordingly, and that court shall, for the purposes of the winding up, have all the powers of the High Court in Ireland.

**135. Jurisdiction to wind up companies in Scotland.**—[The court having jurisdiction to wind up companies registered in Scotland shall be the Court of Session in either division thereof, or, in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary during session, and in time of vacation the Lord Ordinary on the bills.

**136. Power in Scotland to remit winding up to Lord Ordinary.**—[Where the court in Scotland makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

**137. Provisions as to applications for winding up.**—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately: Provided that

(a) A contributory shall not be entitled to present a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorized in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot



be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

**138. Effect of winding-up order.]** An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

**139. Commencement of winding up by court.]** A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

**140. Power to stay or restrain proceedings against company.]** At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may—

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) Where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

**141. Powers of court on hearing petition.]—(1)** On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

**142. Actions stayed on winding-up order.]** When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

**143. Copy of order to be forwarded to registrar.]** On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

**144. Power of court to stay winding up.]** The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

**145. Court may have regard to wishes of creditors or contributories.]** The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

#### Official Receiver.

**146. Definition of official receiver.]—(1)** For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" shall mean

the official receiver, if any, attached to the court for bankruptcy purposes; or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint; or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade.

(2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

**147. Statement of company's affairs to be submitted to official receiver.]—(1)** Where the court in England has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

**148. Report by official receiver.]—(1)** Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

#### Liquidators.

**149. Appointment, remuneration, and title of liquidators.]—(1)** For the purpose of conducting

the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

(2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.

(3) Where the proceedings are in England—

(a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed;

(b) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(c) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.

(6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court. In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.

(8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(9) A liquidator shall be described as follows (that is to say):—

(a) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and

(b) in a winding up in Scotland or Ireland, by the style of the official liquidator, of the particular company in respect of which he is appointed, and not by his individual name.

(10) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

**150. Custody of company's property.]—(1)** In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

**151. Powers of liquidator.]—(1)** The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof;

(c) in the case of a winding up in England, to employ a solicitor or other agent

to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction:

- (d) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.
- (2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—

- (a) To sell the real and personal property, and things in action of the company, by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (b) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (d) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business;
- (e) To raise on the security of the assets of the company any money requisite;
- (f) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the Court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.

(5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

(6) In a winding up by the court in Scotland the liquidator shall, subject to rules made under this Act, have the same powers as a trustee on a bankruptcy estate.

**152. Meetings of creditors and contributories in English winding up.**—(1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

- (a) determining whether or not an application is to be made to the court for

appointing a liquidator in the place of the official receiver; and

- (b) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.

(3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

**153. Liquidator to give information to official receiver.**—Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

**154. Payments of liquidator in English winding up into bank.**—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

**155. Audit of liquidator's accounts in English winding up.**—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of, and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

**156. Books to be kept by liquidator in English winding up.**—Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent, inspect any such books.

**157. Release of liquidators in England.**—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

**158. Exercise and control of liquidator's powers in England.**—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

**159. Control of Board of Trade over liquidators in England.**—(1) The Board of Trade shall take cognizance of the conduct of liquidators of



companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

*Committee of Inspection, Special Manager, Receiver.*

**160. Committee of inspection in English winding up.**—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories), of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

**161. Power in England to appoint special manager.**—(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

**162. Power in England to appoint official receiver as receiver for debenture holders or creditors.**—[Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.]

*Ordinary Powers of Court.*

**163. Settlement of list of contributories and application of assets.**—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

**164. Power to require delivery of property.**—The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *prima facie* entitled.

**165. Power to order payment of debts by contributory.**—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

**166. Power of court to make calls.**—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

**167. Power to order payment into bank.**—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

**168. Order on contributory conclusive evidence.**—(1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

**169. Power to exclude creditors not proving in time.**—The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

**170. Adjustment of rights of contributories.**—The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

**171. Power to order costs.**—The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

**172. Dissolution of company.**—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

**173. Delegation to liquidator of certain powers of court in England.**—[General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories;
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
- (c) requiring delivery of property or documents to the liquidator;
- (d) making calls;
- (e) fixing a time within which debts and claims must be proved.

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

*Extraordinary Powers of Court.*

**174. Power to summon persons suspected of having property of company.**—(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

**176. Power in England to order public examination of promoters, directors, &c.]—(1)** When an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar, of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a palatine court, before a registrar of that court, and the powers of that court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

**176. Power to arrest absconding contributory.]** The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

**177. Powers of court cumulative.]** Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate

or any contributory or debtor, for the recovery of any call or other sums.

#### *Enforcement of and Appeal from Orders.*

**178. Power to enforce orders.]—(1)** Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) For the purposes of this Part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

**179. Order for calls on contributories in Scotland.]** Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the same became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest; and the decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

**180. Enforcement of orders throughout United Kingdom.]—(1)** Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

**181. Appeals from order.]—(1)** Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary of the Bills in vacation, that—

(i) No order or judgment under the provisions of this Act specified in the First Part of the Fourth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and

(ii) Every other order or judgment (except as hereinafter mentioned) shall be subject to review only by reclaiming note,

in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Fourth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding-up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

#### *Voluntary Winding Up.*

**182. Circumstances in which company may be wound up voluntarily.]** A company may be wound up voluntarily—

(1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(2) If the company resolves by special resolution that the company be wound up voluntarily;

(3) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

**183. Commencement of voluntary winding up.]** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

**184. Effect of voluntary winding up on status of company.]** When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

**185. Notice of resolution to wind up voluntarily.]** When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the Gazette.

**186. Consequences of voluntary winding up.]** The following consequences shall ensue on the voluntary winding up of a company:—

(i) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company;

(ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them;

(iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof;



- (iv) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court:
- (v) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves:
- (vi) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories:
- (vii) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two:
- (viii) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator:
- (ix) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

**187. Notice by liquidator of his appointment.]**—(1) The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

**188. Rights of creditors in a voluntary winding-up.]**—(1) Every liquidator appointed by a company in a voluntary winding-up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the court upon an application under this section.

(5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

**189. Power to fill vacancy in office of liquidator.]**—(1) If a vacancy occurs by death, resigna-

tion, or otherwise in the office of liquidator appointed by the company in a voluntary winding-up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

**190. Delegation of authority to appoint liquidators.]**—(1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

**191. Arrangement when binding on creditors.]**—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

**192. Power of liquidator to accept shares, &c., as consideration for sale of property of company.]**

—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a

year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845 [8 & 9 Vict. c. 16], or, in the case of a winding-up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845 [8 & 9 Vict. c. 17], with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

**193. Power to apply to court.]**—(1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

**194. Power of liquidator to call general meeting.]**—(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

**195. Final meeting and dissolution.]**—(1) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

**196. Costs of voluntary liquidation.]** All

costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

**197. Saving for rights of creditors and contributories.]** The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

**198. Power of court to adopt proceedings of voluntary winding up.]** Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

#### Winding Up subject to Supervision of Court.

**199. Power to order winding up subject to supervision.]** When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue, but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

**200. Effect of petition for winding up subject to supervision.]** A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

**201. Court may have regard to wishes of creditors and contributories.]** The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

**202. Power for court to appoint or remove liquidators.]**—(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

**203. Effect of supervision order.]**—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except subsection (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and sixty-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and

enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding up by the court.

**204. Appointment of voluntary liquidator as liquidator in winding up by court in Scotland or Ireland.]** Where an order has been made in Scotland or Ireland for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

#### Supplemental Provisions.

**205. Avoidance of transfers, &c., after commencement of winding up.]**—(1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

**206. Debts of all descriptions to be proved.]** In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

**207. Application of bankruptcy rules in winding up of insolvent English and Irish companies.]** In the winding up of an insolvent company registered in England or Ireland the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the case may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

**208. Ranking of claims in Scotland.]** In the winding up of a company registered in Scotland, the general and special rules in regard to voting and ranking for payment of dividends provided by sections forty-nine to sixty-six of the Bankruptcy (Scotland) Act, 1856 [19 & 20 Vict. c. 79], or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as is consistent with this Act, apply to creditors of the company voting in matters relating to the winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean winding up, trustee to mean liquidator, and sheriff to mean the court.

**209. Preferential payments.]**—(1) In a winding up there shall be paid in priority to all other debts—

- (a) All parochial or other local rates due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the

fifth day of April next before that date, and not exceeding in the whole one year's assessment;

- (b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and
- (c) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date; and
- (d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906 [6 Edw. 7. c. 58], the liability whereof accrued before the said date, subject nevertheless to the provisions of section five of that Act.

(2) The foregoing debts shall—

- (a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith, so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date herein-before in this section referred to is—

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
- (b) in any other case, the date of the commencement of the winding up.

**210. Fraudulent preference.]**—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up,



shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

**211. Avoidance of certain attachments, executions, &c., in case of company registered in England or Ireland.**—Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

**212. Effect of floating charge.**—Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

**213. Effect in case of company registered in Scotland of diligence within 60 days of winding up by or subject to supervision of court.**—In the winding up, by or subject to the supervision of the court, of a company registered in Scotland, the following provisions shall have effect:—

- (1) The winding up shall, in the case of a winding up by the court as at its commencement, and in the case of a winding up subject to supervision as at the date of the presentation of the petition on which the supervision order is pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the winding up by the court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and those funds or effects, or the proceeds of those effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or poinder before the date of the winding up, or of the petition, as the case may be, who is thus deprived of the benefit of his diligence, shall have preference out of those funds or effects for the expense *bonâ fide* incurred by him in such diligence:
- (2) The winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground hereinafter provided:
- (3) The provisions of sections one hundred and twelve to one hundred and seventeen, and of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856 [19 & 20 Vict. c. 79], shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator"; and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland:
- (4) No poinding of the ground which has not been carried into execution by sale

of the effects sixty days before the respective dates aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

**214. General scheme of liquidation may be sanctioned.**—(1) The liquidator may, with the sanction following (that is to say)—

- (a) In the case of a winding up by the court in England with the sanction either of the court or of the committee of inspection;
  - (b) in the case of a winding up by the court in Scotland or Ireland, and in the case of any winding up subject to supervision, with the sanction of the court; and
  - (c) in the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,
- do the following things or any of them:—
- (i) Pay any classes of creditors in full;
  - (ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
  - (iii) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability, or claim, and give a complete discharge in respect thereof.

(2) In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

**215. Power of court to assess damages against delinquent directors, &c.**—(1) Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section four of the Bankruptcy Act, 1883 [45 & 47 Vict. c. 52].

(4) So much of this section as refers to promoters, and to property of a company other than money, shall not apply to a winding up in Scotland or Ireland.

**216. Penalty for falsification of books.**—If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

**217. Prosecution of delinquent directors, &c.**—(1) If it appears to the court in the course of a winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

**218. Penalty on perjury.**—If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

**219. Meetings to ascertain the wishes of creditors or contributories.**—(1) Where by this Act the court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

**220. Books of company to be evidence.**—Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima-facie* evidence of the truth of all matters purporting to be therein recorded.

**221. Inspection of books.**—After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

**222. Disposal of books and papers of company.**—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say):—

- (a) In the case of a winding up by or subject to the supervision of the court, in such a way as the court directs;
- (b) in the case of a voluntary winding up, in such a way as the company by extraordinary resolution directs.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

**223. Power of court to declare dissolution of company void.**—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

**224. Information as to pending liquidations in England.**—(1) Where a company is being wound up in England, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(5) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section one hundred and sixty-two of the Bankruptcy Act, 1883 (46 and 47 Vict., c. 52), for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(6) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(7) Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

**225. Judicial notice of signature of officers.** In all proceedings under this Part of this Act,

all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stamparies jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Session, or court exercising the stamparies jurisdiction, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

**226. Special commission for receiving evidence.**—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the judge exercising the bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in any part of the United Kingdom, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding-up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of a county court, judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

**227. Court may order examination of persons in Scotland.**—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(2) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(3) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(4) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(5) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

**228. Affidavits, &c., in United Kingdom and**

**Colonies.**—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits, or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

**229. Companies Liquidation Account defined.**

—(1) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connection with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

**230. Investment of surplus funds on general account.**—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

**231. Separate accounts of particular estates.**

—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England and, when the cash balances standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

**232. Certain receipts and fees to be applied in aid of expenditure.** The Treasury may issue



to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding up of companies in England from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under this Act in relation to the winding up of companies in England.

**233. Officers and remuneration.**—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of the Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

(3) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as he thinks fit.

**234. Annual accounts of English winding up.**—(1) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act in relation to the winding up of companies in England and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875 [38 & 39 Vict. c. 77], shall apply to the account as if the account had been required by that section.

(2) The accounts of the Board of Trade under this Act in relation to the winding up of companies in England shall be audited in such a manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board shall make such returns and give such information as the Treasury direct.

**235. Returns by officers in English winding up.** The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

**236. Proceedings of Board of Trade.**—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

#### Rules and Fees.

**237. Rules and fees for winding up in England.**—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially

noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the county palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

(5) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890 [53 & 54 Vict. c. 63], which are in force at the commencement of this Act.

**238. Powers to make rules of procedure.**—(1) Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made—

(a) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England;

(b) As regards the Court of Session, by act of sederunt;

(c) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland;

(d) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.

(2) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862 [25 & 26 Vict. c. 89], or any Act amending the same, which are in force at the commencement of this Act.

#### Special Provisions as to Stannaries

**239. Attachment of debt due to contributory on winding up in stanneries court.** When several companies are in course of liquidation by or under the superintendence of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

**240. Preferential payment in stannaries cases.** In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

(1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser, or secretary:

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts:

(3) Wages of any miner, artizan, or labourer unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906 [6 Edw. 7, c. 58], all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability whereof accrued before the commencement of the winding up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary, and, subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

**241. Provisions as to mine club funds.**—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as, part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

#### Removal of Defunct Companies from Register.

**242. Registrar may strike defunct company off register.**—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto,

he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

#### PART V.

##### REGISTRATION OFFICE AND FEES.

**243. Registration offices in England, Scotland, and Ireland.**—(1) For the purposes of the registration of companies under this Act, there shall be offices in England, Scotland, and Ireland, at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the registration of companies under this Act, and may make regulations with respect to their duties; and may remove any persons so appointed.

(3) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in

respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation, and not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.

(7) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England, Scotland, or Ireland, certified to be a true copy under the hand of the registrar or an assistant registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(8) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the Board may for the time being authorise; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or to or by such person as the Board may for the time being authorise in Scotland or Ireland, in the absence of the registrar or assistant registrar; but, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

**244. Fees.**—(1) There shall be paid to the registrar in respect of the several matters mentioned in Table B. in the First Schedule to this Act the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

#### PART VI.

##### APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

**245. Application of Act to companies formed under former Companies Acts.**—In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

**246. Application of Act to companies registered under former Companies Acts.**—This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is herein-after in this Act declared to apply

to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

**247. Application of Act to companies re-registered under Companies Act, 1879.**—This Act shall apply to every unlimited company registered in pursuance of the Companies Act, 1879 [42 & 43 Vict. c. 76], as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the Companies Act, 1879.

**248. Mode of transferring shares.**—A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

#### PART VII.

##### COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

**249. Companies capable of being registered.**—

(1) With the exceptions and subject to the provisions mentioned and contained in this section—

- (i) any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and
  - (ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members;
- may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.

(2) Provided as follows:—

- (a) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as herein-after defined, shall not register in pursuance of this section:
- (b) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee:
- (c) A company that is not a joint stock company as herein-after defined shall not register in pursuance of this section as a company limited by shares.
- (d) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:
- (e) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting:
- (f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution



declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(4) A company registered under the Companies Act, 1862, shall not be registered in pursuance of this section.

**250. Definition of joint stock company.]** For the purpose of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

**251. Liability of bank of issue unlimited in respect of notes.]—**(1) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes; and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

(2) For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

**252. Requirements for registration by joint stock companies.]** Before the registration in pursuance of this part of this Act of a joint stock company there shall be delivered to the registrar the following documents (that is to say):—

- (1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;
- (2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnership, cost book regulations, or other instrument constituting or regulating the company; and
- (3) If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—

- (a) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

- (b) The number of shares taken and the amount paid on each share;
- (c) The name of the company, with the addition of the word "limited" as the last word thereof; and
- (d) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

**253. Requirements for registration by other than joint stock companies.]** Before the registration in pursuance of this part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

- (1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and
- (2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of co-partnership, cost book regulations, or other instrument constituting or regulating the company; and
- (3) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

**254. Authentication of statements of existing companies.]** The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

**255. Registrar may require evidence as to nature of company.]** The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

**256. On registration of banking company with limited liability, notice to be given to customers.]**

—(1) Where a banking company which was in existence on the seventh day of August eighteen hundred and sixty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

**257. Exemption from certain companies from payment of fees.]** No fees shall be charged in respect of the registration in pursuance of this part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

**258. Addition of "limited" to name.]** When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

**259. Certificate of registration of existing companies.]** On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under Table B. in the First Schedule to this Act, the registrar shall certify under this hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

**260. Vesting of property on registration.]** All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

**261. Saving for existing liabilities.]** Registration of a company in pursuance of this Part of the Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

**262. Continuation of existing actions.]** All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer of any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

**263. Effect of registration under Act.]** When a company is registered in pursuance of this Part of this Act—

- (i) All provisions contained in any Act of Parliament, deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles;
- (ii) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(a) The regulations in Table A. in the First Schedule to this Act shall not apply unless adopted by special resolution;

(b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(d) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company;

(e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;

(f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registra-

tration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply:

(iii) The provisions of this Act with respect to—

(a) the registration of an unlimited company as limited;

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed, of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company:

(iv) Nothing in this section shall authorize the company to alter any such provisions contained in any deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorized to be altered by this Act:

(v) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnership, letters patent, or other instrument constituting or regulating the company, be vested in the company.

**264. Power to substitute memorandum and articles for deed of settlement.**—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

(a) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(b) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company regis-

tered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnership or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

**265. Power of court to stay or restrain proceedings.**—The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

**266. Actions stayed on winding up order.**—Where an order has been made for winding up a company registered in pursuance of this Part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

## PART VIII.

### WINDING UP OF UNREGISTERED COMPANIES.

**267. Meaning of unregistered company.**—For the purposes of this Part of this Act the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the Abandonment of Railways Act, 1850 [13 & 14 Vict. c. 83], and the Abandonment of Railways Act, 1869 [32 & 33 Vict. c. 114], and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863 [26 & 27 Vict. c. 87], and any limited partnership.

**268. Winding up of unregistered companies.**—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(i) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:

(ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

(iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say):—

(a) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) If the company is unable to pay its debts;

(c) If the court is of opinion that

it is just and equitable that the company should be wound up:

(iv) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:—

(a) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(b) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

(c) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(d) If in Scotland the inducible of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(e) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts:

(v) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867:

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873 [36 & 37 Vict. c. 66], and, as respects Ireland, under the authority of the Supreme Court of Judicature (Ireland) Act, 1877 [40 & 41 Vict. c. 57], the jurisdiction of the High Court in England or Ireland under this provision shall be exer-



cised by the Chancery Division of that Court:

- (vi) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887 [50 & 51 Vict. c. 47], as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company:

- (vii) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications (if any) as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

(2) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

**269. Contributors in winding up of unregistered companies.]**—(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay, or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid:

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked, or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories and to the liabilities of husbands and wives respectively, shall apply.

**270. Power of court to stay or restrain proceedings.]** The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up, and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

**271. Actions stayed on winding-up order.]** Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

**272. Directions as to property in certain cases.]** If an unregistered company has no power to sue, and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that pro-

perty, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

**273. Provisions of Part of Act cumulative.]** The provisions of this Part of this Act with respect to unregistered companies shall be in addition to, and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any power, or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

#### PART IX.

#### COMPANIES ESTABLISHED OUTSIDE THE UNITED KINGDOM.

**274. Requirements as to companies established outside the United Kingdom.]**—(1) Every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom shall within one month from the establishment of the place of business file with the registrar of companies—

- (a) a certified copy of the charter, statutes, or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company;
- (c) the names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the company service of process, and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument, or in the directors or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Act and having a share capital, be required under this Act to be included in the annual summary.

(4) Every company to which this section applies, and which uses the word "Limited" as part of its name, shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company, and the country in which the company is incorporated; and
- (c) have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

(6) For the purposes of this section—

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

The expression "place of business" includes a share transfer or share registration office;

The expression "director" includes any person occupying the position of director, by whatever name called; and The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five shillings, or such smaller fee as may be prescribed.

**275. Power of companies incorporated in British possessions to hold lands.]** A company incorporated in a British possession which has filed with the registrar of companies the documents and particulars specified in paragraphs (a), (b), and (c) of subsection (1) of the last foregoing section shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act.

#### PART X.

#### SUPPLEMENTAL.

#### Legal Proceedings, Offences, &c.

**276. Prosecution of offences.]**—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.

(2) In Scotland all prosecutions for offences or fines under the provisions of this Act relating to—

- (a) the appointment of directors;
- (b) the restrictions on commencement of business by a company;
- (c) returns as to allotments;
- (d) false statements in respect of which a penalty is provided by this Part of this Act;
- (e) the filing of copies of a prospectus, an order revoking the dissolution, or an order sanctioning the reorganisation of the share capital of a company;
- (f) the filing of notice of appointment of a liquidator or of the accounts of a receiver or manager;
- (g) general meetings;
- (h) companies established outside the United Kingdom;
- (i) the issue of debentures and certificates of shares and debenture stock;
- (j) the issue, circulation, and publication of balance sheets;
- (k) unqualified persons acting as directors;
- (l) the inspection of registers of debenture holders and the furnishing of copies of trust deeds;

shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

**277. Applications of fines.]** The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information, or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

**278. Costs in actions by certain limited companies.]** Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

**279. Power of court to grant relief in certain cases.]** If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust, it appears to the court hearing the case that the

director or person is, or may be, liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

**280. Jurisdiction of stannaries court.**—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896 [59 & 60 Vict. c. 45], by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act, and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit;

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

**281. Penalty for false statement.**—If any person in any return, report, certificate, balance sheet, or other document, required by, or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of, or in addition to such imprisonment as aforesaid:

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

**282. Penalty for improper use of word "Limited."**—If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

#### Report by Board of Trade.

**283. Annual Report by Board of Trade.**—The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

#### Authentication of Documents issued by Board of Trade.

**284. Authentication of documents issued by Board of Trade.**—Any approval, sanction, or licence, or revocation of licence, which under this Act may be given, or made by the Board of Trade, may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

#### Interpretation, &c.

**285. Interpretation.**—In this Act, unless the context otherwise requires, the following ex-

pressions have the meanings hereby assigned to them (that is to say):—

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862;

"Company" means a company formed and registered under this Act, or an existing company;

"Articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A. in the First Schedule annexed to the Companies Act, 1862 [19 & 20 Vict. s. 47], or in that Table as altered in pursuance of section seventy-one of that Act, or in Table A. in the First Schedule to this Act;

"Memorandum" means the memorandum of association of a company, as originally framed, or as altered in pursuance of the provisions of this Act;

"Document" includes summons, notice, order, and other legal process, and registers;

"Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied;

"Debenture" includes debenture stock;

"Books and papers," and "books or papers," include accounts, deeds, writings, and documents;

"The registrar of companies," or, when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires;

"The court" used in relation to a company means the court having jurisdiction to wind up the company;

"Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intitled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies;

"The Gazette" means, as respects companies registered in England, the London Gazette; as respects companies registered in Scotland, the Edinburgh Gazette; and, as respects companies registered in Ireland, the Dublin Gazette;

"Real and personal," as respects Scotland, means heritable and moveable;

"General rules" means general rules made under this Act, and includes forms;

"Prescribed" means, as respects the provisions of this Act relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade;

"Company within the stannaries" means, a company engaged in, or formed for working mines within the stannaries;

"The court exercising the stannaries jurisdiction" used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested;

"Director" includes any person occupying the position of director by whatever name called;

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription, or purchase any shares or debentures of a company.

#### Repeal of Acts and Transitional Provisions.

**286. Repeal of Acts and savings.**—(1) The Acts mentioned in the First Part of the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part: Provided that the repeal shall not affect—

(a) The incorporation of any company registered under any enactment hereby repealed; nor

(b) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

(c) Table A. in the First Schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that Schedule, or as altered in pursuance of section seventy-one of that Act), so far as the same applies to any company existing at the commencement of this Act; nor

(d) The continuance in force of the enactments set out in the Second Part of the Sixth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.

(2) The mention of particular matters in this section, or in any other section of this Act, shall not prejudice the general application of section thirty-eight of the Interpretation Act, 1889 [52 & 53 Vict. c. 63], with regard to the effect of repeals.

**287. Saving of pending proceedings for winding up.**—The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

**288. Saving of deeds.**—Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

**289. Former registration offices, registers, official receivers, &c., continued.**—(1) The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall, during the pleasure of the Board of Trade, hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties.

(4) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.

(5) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive the salaries or remuneration hitherto received by them.



(6) The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890.

290. *Saving for existing rules of procedure, &c.* Until revoked, and except as varied under the powers of this Act, the general rules and orders, and scales of fees, under the Companies Winding Up Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

291. *Substitution of provisions of this Act for provisions of repealed Acts.* Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

292. *Saving for 28 & 29 Vict. c. 78. s. 3.* Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865.

293. *Saving for Life Assurance Companies Acts.* Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872 [33 & 34 Vict. c. 61, 34 & 35 Vict. c. 58, 35 & 36 Vict. c. 41], except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act.

294. *Saving for 34 & 35 Vict. c. 31 s. 5.* Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

295. *Short title.* This Act may be cited as the Companies (Consolidation) Act, 1908.

296. *Commencement of Act.* This Act shall come into operation on the first day of April nineteen hundred and nine.

## SCHEDULES.

### FIRST SCHEDULE.

[Sections 10, 11, 67, 265, 285.]

#### TABLE A.

#### REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

##### *Preliminary.*

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

##### *Business.*

2. The directors shall have regard to the restrictions on the commencement of business imposed by section eighty-seven of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the company.

##### *Shares.*

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the

company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of the Companies (Consolidation) Act, 1908, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

##### *Lien.*

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

##### *Calls on Shares.*

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall sub-

ject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

##### *Transfer and Transmission of Shares.*

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve.

I, A.B. of \_\_\_\_\_ in consideration of the sum of £ \_\_\_\_\_ paid to me by C.D. of \_\_\_\_\_ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered \_\_\_\_\_ in the undertaking called the \_\_\_\_\_ Company Limited, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof: and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Witness to the signatures of, &c.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(a) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall

be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends, and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

#### *Forfeiture of Shares.*

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms, and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if, and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

#### *Conversion of Shares into Stock.*

31. The directors may, with the sanction of the company, previously given in general meet-

ing, convert any paid-up shares into stock, and may, with the like sanction, reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

#### *Share Warrants.*

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant, and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer, and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make

rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

#### *Alteration of Capital.*

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to any offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may, by special resolution—

- (a) Consolidate and divide its share capital into shares of larger amount than its existing shares;
- (b) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of subsection (1) of section forty-one of the Companies (Consolidation) Act, 1908;
- (c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person;
- (d) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

#### *General Meetings.*

45. The statutory general meeting of the company shall be held within the period required by section sixty-five of the Companies (Consolidation) Act, 1908.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section sixty-six of the Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director



or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

*Proceedings at General Meeting.*

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be

taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

*Votes of Members.*

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted, to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

*Company, Limited.*

"I, \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, being a member of the \_\_\_\_\_ Company, Limited, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_, and at any adjournment thereof."

Signed this \_\_\_\_\_ day of \_\_\_\_\_

*Directors.*

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of the Companies (Consolidation) Act, 1906.

*Powers and Duties of Directors.*

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies (Consolidation) Act, 1906, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or pro-

visions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1906, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors, and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors.

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

*The Seal.*

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary, or other person as aforesaid, shall sign every instrument to which the seal of the company is so affixed in their presence.

*Disqualifications of Directors.*

77. The office of director shall be vacated, if the director—

- (a) ceases to be a director by virtue of section seventy-three of the Companies (Consolidation) Act, 1906; or
- (b) holds any other office of profit under the company except that of managing director or manager; or
- (c) becomes bankrupt; or
- (d) is found lunatic or becomes of unsound mind; or
- (e) is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director; but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

*Rotation of Directors.*

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every sub-

sequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who become directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director, who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

#### *Proceedings of Directors.*

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings; if no such chairman is elected, or if

at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### *Dividends and Reserve.*

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

#### *Accounts.*

103. The directors shall cause true accounts to be kept—

Of the sums of money received and expended by the company and the matter in respect of which such receipts and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account, or (in the case of the first account) since the incorporation of the company,

made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting, made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

#### *Audit.*

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

#### *Notices.*

110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom, and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinafter authorised to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

#### **TABLE B.**

[Sections 244, 259.]

#### **TABLE OF FEES to be paid to the REGISTRAR of COMPANIES.**

I.—By a company having a share capital.		
For registration of a company whose nominal share capital does not exceed 2,000 <i>l.</i>	£ s. d.	2 0 0
For registration of a company whose nominal share capital exceeds 2,000 <i>l.</i> ,		



the following fees, regulated according to the amount of nominal share capital (that is to say); £ s. d.

For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, up to 5,000*l.* 1 0 0

For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, after the first 5,000*l.*, up to 100,000*l.* 0 5 0

For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, after the first 100,000*l.* 0 1 0

For registration of any increase of share capital made after the first registration of the company, the same fees per 1,000*l.*, or part of a 1,000*l.*, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration: £ s. d.

Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.

For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager of the statement required to be sent to the registrar by the liquidator in a winding-up in England. 0 5 0

For making a record of any fact by this Act required or authorised to be recorded by the registrar. 0 5 0

II.—By a company not having a share capital.

For registration of a company whose number of members, as stated in the articles, does not exceed 20 2 0 0

For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100 5 0 0

For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.

For registration of a company in which the number of members is stated in the articles to be unlimited 20 0 0

For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, or that increase 0 5 0

Provided that no company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver

or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England.

For making a record of any fact by this Act required or authorised to be recorded by the registrar 0 5 0

FORM C.

[Section 108.]

FORM OF STATEMENT to be published by BANKING and INSURANCE COMPANIES, and DEPOSIT, PROVIDENT, or BENEFIT SOCIETIES.

\* The share capital of the company is divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (or July) were—

Debts owing to sundry persons by the company.

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were—

Government securities [stating them]

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

\* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

SECOND SCHEDULE.

[Section 82.]

THE COMPANIES (CONSOLIDATION) ACT, 1908.

STATEMENT IN LIEU OF PROSPECTUS.

filed by

LIMITED

pursuant to section eighty-two of the Companies (Consolidation) Act, 1908.

Presented for filing by

THE COMPANIES (CONSOLIDATION) ACT, 1908.

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company - £

Divided into - Shares of £ each.

Names, descriptions, and address s of directors or proposed directors.

Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.

Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash.

The consideration for the intended issue of those shares and debentures.

1. shares of £ fully paid.

2. shares upon which £ per share credited as paid.

3. debenture £

4. Consideration.

Names and addresses of (a) vendors of property purchased or acquired, or proposed to be (b) purchased or acquired by the company.

Amount (in cash, shares, or debentures) payable to each separate vendor.

Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.

Total purchase price - £

Cash - £

Shares - £

Debentures - £

Goodwill - £

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring subscriptions for any shares or debentures in the company, or

Rate of the commission

Amount paid, payable.

Rate per cent.

Estimated amount of preliminary expenses

£

Amount paid or intended to be paid to any promoter.

Consideration for the payment.

Name of promoter.

Amount £

Consideration:—

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any

person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.

Nature of the provisions.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing).

(a) For definition of vendor, see Section 81 (2) of the Companies (Consolidation) Act, 1908.  
(b) See Section 81 (3) of the Companies (Consolidation) Act, 1908.

### THIRD SCHEDULE.

[Section 118.]

#### FORM A.

MEMORANDUM OF ASSOCIATION of a company limited by shares.

1st. The name of the company is "The Eastern Steam Packet Company Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
"1. John Jones of county of merchant.	200
"2. John Smith of county of in the	25
"3. Thomas Green of county of in the	30
"4. John Thompson of county of in the	40
"5. Caleb White of county of in the	15
"6. Andrew Brown of county of in the	5
"7. Caesar White of county of in the	10
Total shares taken	325

Dated the day of 19 .  
Witness to the above signatures,  
A.B., No. 13, Hute Street, Clerkenwell,  
London.

#### FORM B.

MEMORANDUM AND ARTICLES OF ASSOCIATION of a company limited by Guarantee, and not having a share capital.

#### Memorandum of Association.

1st. The name of the company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the county of merchant.

"2. John Smith of in the county of

"3. Thomas Green of in the county of

"4. John Thompson of in the county of

"5. Caleb White of in the county of

"6. Andrew Brown of in the county of

"7. Caesar White of in the county of

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell,  
London.

ARTICLES OF ASSOCIATION to accompany preceding MEMORANDUM OF ASSOCIATION.

#### Number of Members.

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors herein-after mentioned may, whenever the business of the association requires it, register an increase of members.

#### Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations herein-after contained.

#### General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members, may themselves convene a meeting.

#### Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner herein-after mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their member to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

#### Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee curator bonis, or other legal curator.



21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:—

Company, Limited.  
I, \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ being a member of the Company, Limited, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy, to vote for me and on my behalf at the ordinary or extraordinary, as the case may be, general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof.  
Signed this \_\_\_\_\_ day of \_\_\_\_\_

#### Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of the Companies (Consolidation) Act, 1908, be deemed to be directors.

#### Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Companies (Consolidation) Act, 1908, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

#### Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

#### Business of Company.

[Here insert Rules as to Mode in which Business of Insurance is to be conducted.]

#### Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

#### Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

#### Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of \_\_\_\_\_ in the county of \_\_\_\_\_ merchant.  
"2. John Smith of \_\_\_\_\_ in the county of \_\_\_\_\_  
"3. Thomas Green of \_\_\_\_\_ in the county of \_\_\_\_\_  
"4. John Thompson of \_\_\_\_\_ in the county of \_\_\_\_\_

"5. Caleb White of \_\_\_\_\_ in the county of \_\_\_\_\_  
"6. Andrew Brown of \_\_\_\_\_ in the county of \_\_\_\_\_  
"7. Caesar White of \_\_\_\_\_ in the county of \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.  
Witness to the above signatures,  
A.B., No. 13, Hute Street, Clerkenwell, London.

#### FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a company limited by guarantee, and having a share capital.

#### Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
"1. John Jones of _____ in the county of _____	200
"2. John Smith of _____ in the county of _____	25
"3. Thomas Green of _____ in the county of _____	30
"4. John Thompson of _____ in the county of _____	40
"5. Caleb White of _____ in the county of _____	15
"6. Andrew Brown of _____ in the county of _____	5
"7. Caesar White of _____ in the county of _____	10
Total shares taken	325

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Witness to the above signatures,  
A.B., No. 13, Hute Street, Clerkenwell, London.

#### Articles of Association to accompany preceding Memorandum of Association.

1. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

2. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

3. All the articles of Table A. of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles and to apply to the company.

#### Names, Addresses, and Description of Subscribers.

"1. John Jones of \_\_\_\_\_ in the county of \_\_\_\_\_ merchant.  
"2. John Smith of \_\_\_\_\_ in the county of \_\_\_\_\_  
"3. Thomas Green of \_\_\_\_\_ in the county of \_\_\_\_\_  
"4. John Thompson of \_\_\_\_\_ in the county of \_\_\_\_\_  
"5. Caleb White of \_\_\_\_\_ in the county of \_\_\_\_\_  
"6. Andrew Brown of \_\_\_\_\_ in the county of \_\_\_\_\_  
"7. Caesar White of \_\_\_\_\_ in the county of \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Witness to the above signatures,  
A.B., No. 13, Hute Street, Clerkenwell, London.

#### FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited company having a share capital.

#### Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

We the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
"1. John Jones of _____ in the county of _____	3
"2. John Smith of _____ in the county of _____	2
"3. Thomas Green of _____ in the county of _____	1
"4. John Thompson of _____ in the county of _____	2
"5. Caleb White of _____ in the county of _____	2
"6. Andrew Brown of _____ in the county of _____	1
"7. Abel Brown of _____ in the county of _____	1
Total shares taken	12

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Witness to the above signatures,  
A.B., No. 20, Bond Street, London.

#### Articles of Association to accompany preceding Memorandum of Association.

1. The share capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

2. All the articles of Table A. of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles and to apply to the company.

#### Names, Addresses, and Description of Subscribers.

"1. John Jones of \_\_\_\_\_ in the county of \_\_\_\_\_ merchant.  
"2. John Smith of \_\_\_\_\_ in the county of \_\_\_\_\_  
"3. Thomas Green of \_\_\_\_\_ in the county of \_\_\_\_\_  
"4. John Thompson of \_\_\_\_\_ in the county of \_\_\_\_\_  
"5. Caleb White of \_\_\_\_\_ in the county of \_\_\_\_\_  
"6. Andrew Brown of \_\_\_\_\_ in the county of \_\_\_\_\_  
"7. Abel Brown of \_\_\_\_\_ in the county of \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Witness to the above signatures,  
A.B., No. 20, Bond Street, London.

## [Section 26.]

## FORM E. as required by Part II. of the Act.

SUMMARY OF SHARE CAPITAL AND SHARES of the COMPANY, LIMITED, made up to the day of 19 (being the fourteenth day after the date of the first ordinary general meeting in 19 ).

Nominal share capital £ { shares of £ each.  
divided into { shares of £ each.

Total number of shares taken up\* to the day of 19 (which number must agree with the total shown in the list as held by existing members).

Number of shares issued subject to payment wholly in cash ...

Number of shares issued as fully paid up otherwise than in cash ...

Number of shares issued as partly paid up to the extent of per share otherwise than in cash ...

† There has been called up on each of shares, £

There has been called up on each of shares, £

† There has been called up on each of shares, £

‡ Total amount of calls received, including payments on application and allotment ... £

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash ... £

Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share ... £

Total amount of calls unpaid ... £

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary ... £

Total amount (if any) paid on shares forfeited ... £

Total amount of shares and stock for which share warrants are outstanding ... £

Total amount of share warrants issued and surrendered respectively since date of last summary ... £

Number of shares or amount of stock comprised in each share warrant ... £

Total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies, or which would require registration if created after the first day of July nineteen hundred and eight ... £

\* When there are shares of different kinds or amounts (e.g., Preference and Ordinary, or £10 or £5) state the numbers and nominal values separately.

† Where various amounts have been called or there are shares of different kinds state them separately.

‡ Include what has been received on forfeited as well as on existing shares.

§ State the aggregate number of shares forfeited (if any).

STATEMENT in the form of a balance sheet made up to the day of 19, containing the particulars of the capital, liabilities, and assets of the company.

The Return must be signed at the end by the manager or secretary of the company.

Presented for filing by

LIST OF PERSONS holding shares in the Company, Limited, on the day of 19, and of persons who have held shares therein at any time since the date of the last return, shewing their names and addresses and an account of the shares so held.

Folio in Register Ledger containing Particulars.	NAMES, ADDRESSES, AND OCCUPATIONS				ACCOUNT OF SHARES.				Remarks.
	Surname.	Christian Name.	Address.	Occupation.	† Number of Shares held by existing Members at Date of Return.		‡ Particulars of Shares transferred since the Date of the last Return by Persons who are still Members.		
					Number. ‡	Date of Registration of Transfer.	Number. ‡	Date of Registration of Transfer.	

† The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

‡ When the shares are of different classes three columns may be subdivided so that the number of each class held or transferred may be shown separately.

§ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

NAMES AND ADDRESSES of the persons who are the Directors of the Limited on the day of 19.

Names.	Addresses.

NOTE.—Banking companies must add a list of all their places of business.

(Signature) \_\_\_\_\_

(State whether manager or secretary) \_\_\_\_\_

## FORM F.

[Section 201.]

## LICENCE TO HOLD LANDS.

The Board of Trade hereby license the to hold the lands hereunder described (insert description of lands) (or to hold lands not exceeding the whole acreal.

The conditions of this licence are (insert conditions, if any).

## FOURTH SCHEDULE.

[Section 181.]

## PART I.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO BE FINAL.

Orders:—

As to time for proving claims [s. 169].  
As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company [s. 174].

As to meetings for ascertaining wishes of creditors or contributories [s. 219].

As to summoning meetings of creditors or contributories where a compromise is proposed [s. 120].

As to the examination of witnesses in regard to the property or affairs of a company [s. 227].

## PART II.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO TAKE EFFECT UNTIL RECLAIMING NOTE DISPOSED OF.

Orders:—

Restraining or permitting commencement or continuance of legal proceedings [ss. 140, 142, 144, 266, 270, 271].

Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or under supervision [ss. 149, 186, 202].

Sanctioning the exercise of any power by an official liquidator other than the power to appoint a law agent or to sell property [s. 151].

Requiring the delivery of property or documents to the official liquidator [s. 164].

As to the arrest and detention of an absconding contributory and his property [s. 176].

Limiting the powers of provisional official liquidators [s. 151 (5)].

For continuance of winding-up under supervision [s. 199].

## FIFTH SCHEDULE.

[Section 281.]

PROVISIONS REFERRED TO IN SECTION 281 OF THE ACT.

Provisions relating to—

The conclusiveness of certificates of incorporation [s. 17];

Restrictions on appointments or advertisement of directors [s. 72];

Restrictions on commencement of business [s. 87];

Returns as to allotments [s. 88];

Statutory meetings [s. 65];

The particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary [s. 26];

The appointment and remuneration, and powers and duties, of auditors [ss. 112, 113];

Obligations of companies where no prospectus is issued [s. 82];

Registration of mortgages and charges in England and Ireland [s. 93];

Filing of accounts of receiver and manager [s. 95];

Notice by liquidator in voluntary winding-up of his appointment [s. 187];

Rights of creditors in a voluntary winding-up [s. 188];

Requirements as to companies established outside the United Kingdom [s. 274]; and

Annual report by Board of Trade [s. 283].

## SIXTH SCHEDULE.

[Section 286.]

## PART I.

Session and Chapter.	Short Title of Act.	Extent of Repeal.
25 & 26 Vict. c. 89	The Companies Act, 1862	The whole Act
27 Vict. c. 19	The Companies Seals Act, 1864	The whole Act
30 & 31 Vict. c. 131	The Companies Act, 1867	The whole Act
32 & 33 Vict. c. 19	The Stannaries Act, 1869	Sections twenty-five, twenty-six, and thirty-four
33 & 34 Vict. c. 104	The Joint Stock Companies Arrangement Act, 1870	The whole Act
37 & 38 Vict. c. 94	Conveyancing (Scotland) Act, 1874	Section fifty-six
38 & 39 Vict. c. 77	The Supreme Court of Judicature Act, 1875	Section ten, so far as relates to the winding up of companies



Session and Chapter.	Short Title of Act.	Extent of Repeal.	Session and Chapter.	Short Title of Act.	Extent of Repeal.
4) & 41 Vict. c. 26	The Companies Act, 1877	The whole Act	53 & 54 Vict. c. 62	The Companies (Memorandum of Association) Act, 1890	The whole Act
40 & 41 Vict. c. 57	The Supreme Court of Judicature (Ireland) Act, 1877	Subsection (1) of section twenty-eight, so far as relates to the winding up of companies	53 & 54 Vict. c. 63	The Companies (Winding up) Act, 1890	The whole Act
42 & 43 Vict. c. 76	The Companies Act, 1879	The whole Act	53 & 54 Vict. c. 64	The Directors Liability Act, 1890	The whole Act
43 Vict. c. 19	The Companies Act, 1880	The whole Act	56 & 57 Vict. c. 58	The Companies (Winding up) Act, 1893	The whole Act
46 & 47 Vict. c. 30	The Companies (Colonial Registers) Act, 1883	The whole Act	60 & 61 Vict. c. 19	The Preferential Payments in Bankruptcy Amendment Act, 1897	The whole Act
49 Vict. c. 23	The Companies Act, 1886	The whole Act	61 & 62 Vict. c. 26	The Companies Act, 1898	The whole Act
50 & 51 Vict. c. 43	The Stannaries Act, 1887	Sections nine and ten; section thirteen from "Upon the winding up" to the end of the section (being paragraph (2)); and section thirty-one	63 & 64 Vict. c. 48	The Companies Act, 1900	The whole Act
50 & 51 Vict. c. 47	The Trustee Savings Bank Act, 1887	Section three	7 Edw. 7, c. 24	The Limited Partnerships Act, 1907	Subsection (4) of section six
51 & 52 Vict. c. 62	The Preferential Payments in Bankruptcy Act, 1888	Sections one, two, and three, so far as they relate to companies	7 Edw. 7, c. 50	The Companies Act, 1907	The whole Act
52 & 53 Vict. c. 42	The Revenue Act, 1889	Section eighteen	8 Edw. 7, c. 12	The Companies Act, 1908	The whole Act
52 & 53 Vict. c. 60	The Preferential Payments in Bankruptcy (Ireland) Act, 1889	Section four, so far as relates to companies	<p>PART II. [Section 286.]</p> <p>AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND (7 &amp; 8 VICT. C. 113), s. 47.</p> <p><i>Existing companies to have the powers of suing and being sued.] Every company of more than</i> </p>		

six persons established on the sixth day of May one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

#### THE JOINT STOCK BANKING COMPANIES ACT, 1857, PART OF S. 12.

*Power to form banking partnerships of ten persons.]* Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England" or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.

## LIST OF PUBLIC ACTS.

Passed after the Adjournment of August 1st, 1908 (8 Edward VII.).

Cap.	Title.	Statutes page.	Cap.	Title.	Statutes page.
64	Agricultural Holdings (Scotland) ... ..	10	62	Local Government (Scotland) ... ..	10
51	Appellate Jurisdiction ... ..	3	58	Local Registration of Title (Ireland) Amendment ...	7
41	Assizes and Quarter Sessions ... ..	1	47	Lunacy ... ..	3
67	Children ... ..	10	55	Poisons and Pharmacy ... ..	5
57	Coal Mines Regulation ... ..	6	68	Port of London ... ..	29
44	Commons ... ..	2	43	Post Office Consolidation ... ..	3
69	Companies (Consolidation) ... ..	44	52	Post Office Savings Bank (Public Trustee) ... ..	4
60	Constabulary (Ireland) ... ..	9	59	Prevention of Crime ... ..	7
46	Criminal Appeal (Amendment) ... ..	3	66	Public Meeting ... ..	10
50	Crofters Common Grazings Regulation ... ..	3	45	Punishment of Incest ... ..	3
54	East India Loans ... ..	5	49	Statute Law Revision ... ..	3
63	Education (Scotland) ... ..	10	65	Summary Jurisdiction (Scotland) ... ..	10
61	Housing of the Working Classes (Ireland) ... ..	10	56	Tuberculosis Prevention (Ireland) ... ..	6
53	Law of Distress Amendment ... ..	4	42	White Phosphorus Matches Prohibition ... ..	1
43	Local Authorities (Admission of the Press to Meetings) ...	2			

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DIGEST OF CASES REPORTED IN

# THE SOLICITORS' JOURNAL & WEEKLY REPORTER

## VOLUME 53.

ADMINISTRATION.—See Probate.

### ADULTERATION:—

*Certificate of analysis—Margarine with more than sixteen per cent. of water—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 18 and Schedule—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 1—Butter and Margarine Act, 1907 (7 Ed. 7, c. 21), s. 5.*—The certificate of analysis of the principal chemist of the Government Laboratories, given under section 1(4) and (5) of the Sale of Food and Drugs Act, 1899, need not be in the form prescribed in section 18 and the schedule of the Food and Drugs Act, 1875.—*Foot v. Findlay, K.B.D.*, 32; 1909, 1 K. B. 1.

### APPEAL:—

*Time for appealing—Motion for a new trial—Trial by judge and jury—Appeal against decision of judge—Extension of time—Appeal not entered owing to illness of counsel instructed to draw notice of appeal—Rules of the Supreme Court, XXXIX. 1A, 4; LVIII. 15; LXIV. 7.*—Owing to the illness of counsel instructed to draw notice of motion for a new trial in an action tried before a judge and jury in the King's Bench Division of the High Court—the application having reference to the verdict and to a ruling of the judge in admitting certain evidence—notice of appeal could not be lodged within eight days, as prescribed by R.S.C. ord. 39, 1A, 4.

Held, on a motion for extending the time for appealing, that the case came within ord. 64, r. 7, and not under ord. 58, r. 15, and that leave should be granted upon the terms that the applicants paid the respondents' cost of the application in any event.

*Coles v. Ravenshear* (1907, 1 K. B. 1) considered and approved.—*Rumbold v. London County Council, C.A.*, 227.

See also Criminal Law, Justices, Mayor's Court, Poor Law.

### APPOINTMENT:—

1. *Power of appointment—Appointment void for remoteness—Gift to persons entitled in default of appointment—Election.*—Where an appointment is void as transgressing the rule against double possibilities and there is a gift to persons entitled in default of appointment, such persons are not put to their election.

*Re Oliver's Settlement* (1905, 1 Ch. 191) applied.—*Nash, Re, Cook v. Frederick* (No. 2), *Eve, J.*, 698.

2. *Will—Power of appointment by will exercised by a foreign subject—Will invalid by foreign law—Validity of appointment—Wills Act, 1837 (1 Vict. c. 26).*—The execution by a foreign subject of an English testamentary power of appointment by a will in English form is valid, although the will by which the power was exercised is not made in accordance with the law of the testatrix's domicile.—*Murphy v. Deichler, H.L.*, 671.

See also Married Woman, Power, Revenue, Settlement.

### ARBITRATION:—

*Arbitration clause in agreement—Application to stay—"Step in the proceedings"—Summons for directions—Arbitration Act, 1889, s. 4.—R. S. C. XXX. 1, 2.*—A party to an action for an account under an agreement containing an arbitration clause, appearing to a summons for directions and undertaking to account, cannot afterwards, even though no order was made on the summons, apply for a stay of proceedings under section 4 of the Arbitration Act, 1889.—*Ochs v. Ochs Bros., Warrington, J.*, 542.

See also Criminal Law.

### BANKER:—

1. *Deposit of securities—Loan for particular purpose—Securities belonging to third party—General overdraft—Bankers' lien.*—Bankers cannot claim a general banker's lien except upon a customer's own property. Where, therefore, securities which the bankers know to

belong to a third party had been deposited by a customer with the bank to secure a loan for the purposes of the third party, the bankers were not entitled to apply the securities towards the liquidation of a balance due on the customer's current account.—*Cuthbert v. Roberts, Lubbock, & Co., C.A.*, 559.

2. *Forged cheque—Customer—Forgery of customer's signature—Customer's negligence—Estoppel.*—A bank is liable to refund moneys paid upon forged cheques unless it can be shewn that the moneys were paid in consequence of the customer's negligence immediately connected with the transaction, which negligence was the proximate cause of the loss.—*Keptigalla Rubber Estates (Limited) v. National Bank of India, K.B.D.*, 377.

See also Mortgage.

### BANKRUPTCY:—

1. *Costs—Taxation—Small bankruptcies—"Proceedings under the Act"—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 121—Bankruptcy Rules, 1886-1890, r. 112.*—During the course of a small bankruptcy the Official Receiver, acting as trustee in the bankruptcy, employed solicitors to obtain a grant of administration of the estate of the bankrupt's wife in the Probate Division. The registrar of the county court taxed off two-fifths of the profit costs of the solicitors, holding that the steps taken to obtain administration were proceedings under the Bankruptcy Act, 1883, within the meaning of rule 112 of the Bankruptcy Rules, 1886-1890. The Divisional Court (Bigham and Jelf, JJ.) reversed the decision of the registrar, but expressed the opinion that they would not have done so had they not felt bound by the case of *Re Parfitt* (37 W. R. 751, 23 Q. B. D. 40).

The Court of Appeal (Cozens-Hardy, M.R., and Fletcher Moulton and Farwell, L.J.J.) held that the Divisional Court had rightly reversed the decision of the registrar, and approved the decision of Cave, J., in *Re Parfitt*, holding that "proceedings under the Act" in rule 112 means proceedings in the Bankruptcy Court only, and do not include proceedings taken by a trustee in other courts.—*Weighill, Re, Bkcy.*, 63; 1909, 1 K. B. 92.

2. *Deed of arrangement—Liability of trustee under deed to trustee in bankruptcy.*—A trustee under a deed of arrangement took possession of the debtor's stock and sold part of it for £70. Upon hearing that a petition had been presented, the trustee went out of possession, leaving the remainder of the stock in the hands of the debtor, who made away with it before the receiving order was made against him.

Held, that the trustee under the deed must account to the trustee in bankruptcy for the whole of the stock which he had taken possession of and not merely for what he had sold during the time he was in possession.—*Cook, Re, Ex Parte Parsons, Bkcy.*, 359.

3. *Discharge—Notice to creditors of intended application for discharge—Bankruptcy Act, 1883, s. 28, sub-section 5—Bankruptcy Act, 1890, s. 8 sub-section 6—Bankruptcy Rules, 1883 r. 178—Bankruptcy Rules, 1886-1890, r. 235—Form No. 61—Scale of Fees and Percentages, Table A.*—Notice of the day appointed for the hearing of a bankrupt's application for discharge must be sent to each creditor who has been returned in the bankrupt's statement of affairs, not merely to such creditors as have proved their debts.—*Spratly, Re, Ex Parte Spratly, Bkcy.*, 246; 1909, 1 K. B. 559.

4. *Judgment summons—Order for payment of costs of dismissed petition—Committal of petitioning creditor—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.*—Where a debtor has obtained an order against the petitioning creditor for the payment of the costs of a dismissed petition, the court will, upon a judgment summons and on proof of means, order the committal of the petitioning creditor to prison for non-compliance with such order, notwithstanding the

fact that the debtor is indebted to the petitioning creditor in a large sum.—*DRUMMOND, RE, EX PARTE ASHMORE, Bkcy.*, 651.

5. *Judgment summons—Receiving order—Decree for dissolution of marriage—Order for payment of costs by co-respondent—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 103, sub-section 5—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.*—Although a decree nisi for dissolution of marriage containing an order for the payment of the petitioner's costs by the co-respondent is not a final judgment upon which a bankruptcy notice can be founded, a receiving order may, nevertheless, be made against the co-respondent upon a judgment summons in lieu of committing him to prison for default in payment of the money due under the order.—*HALLMAN, RE, EX PARTE ELLIS, Bkcy.*, 544; 1909, 2 K. B. 430.

6. *Married woman—Separate property—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-section 5—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 152.*—In order to bring a married woman within the jurisdiction of the Bankruptcy Court the only condition precedent required is proof that she is trading separately from her husband; it is not necessary to prove that she is possessed of separate property.

*Re Helsby, Ex parte Helsby* (1 Mans. 12), overruled on the point.—*SIMON, RE, C.A.*, 117; 1909, 1 K. B. 201.

7. *Petitioning creditor's debt—Judgment—Part payment—Agreement to pay balance by instalments—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) s. 6.*—A creditor having obtained judgment for £127 9s. 2d., issued a bankruptcy notice therein, but came to an agreement with the debtor to withdraw the notice upon the debtor giving a cheque for fifty pounds and promising to pay the balance of the judgment debt by quarterly instalments of £8 15s., and to pay three guineas costs. The debtor made default in payment of the costs and of the first two instalments, whereupon the creditor issued a bankruptcy notice and presented a petition in respect of the balance of the judgment debt, amounting to £77 9s. 2d.

Held, that the agreement entirely extinguished the creditor's rights under the judgment and substituted a new contract, and that as there was only about £20 due under the agreement at the date of the presentation of the petition, there was no sufficient petitioning creditor's debt, and no receiving order could be made.—*DEBTOR, A, RE, EX PARTE LONDON AND COUNTY DISCOUNT CO., Bkcy.*, 246.

8. *Private examination—Right of counsel for witness to take notes—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 27.*—During the examination of a witness under section 27 of the Bankruptcy Act, 1883, counsel for the trustee objected to counsel for the witness taking notes, and his objection was upheld by the registrar, who said he felt bound by authority.

Held, that the registrar was wrong, and that if he allowed counsel to appear for the witness at all, he must allow him to re-examine the witness, and must, therefore, allow him to take notes.—*WALKER, RE, EX PARTE CHILD, Bkcy.*, 486.

9. *Proof—Application to expunge proof—Locus standi of debtor—Scheme of arrangement—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Schedule 2, r. 25.*—A debtor has no locus standi to apply to expunge a proof unless there is a proposal for a composition or scheme of arrangement actually lodged with the official receiver at the time when the debtor's application comes on for hearing.—*BENOIST, RE, Bkcy.*, 700.

See also Insurance, Practices.

## BASTARDY:—

*Agreement to avoid proceedings in—Payment of weekly sums by father—Mother to maintain the child—Agreement terminated by death of mother.*—A contract made between the father and the mother of a bastard child, the father undertaking to pay a weekly sum for the maintenance of the child up to the age of fourteen years, and the mother undertaking to maintain the child and not to take proceedings in bastardy, is terminated on the death of the mother, although the child is less than fourteen years of age, and neither the benefit nor the burden of the contract passes to the personal representatives of the mother.—*JAMES V. MORGAN, K.B.D.*, 245; 1909, 1 K. B. 564.

See also Husband and Wife.

## BILL OF LADING:—

*Indorsement to agent—Special property—Right to possession as against execution creditor of consignor—Intention.*—The effect of the indorsement of a bill of lading depends upon the intention of the parties. Accordingly, where a bill of lading is indorsed to an agent it confers no property in the goods, but only clothes the agent with authority to take possession for the consignees.

*Swell v. Burdick* (10 A. C. 74) applied.—*BURGOS V. NASCIMENTO, Eve, J.*, 60.

See also Ship.

## BURIAL:—

*Burial ground—Unconsecrated ground—Closed by Order in Council—Vested in rector and churchwardens—Right to administer income—Parish—Vestry—Borough council—Church property—Burial Act, 1857 (20 & 21 Vict. c. 81), s. 24—London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 4, 23.*—Where ground originally purchased for the purposes of a cemetery, but never consecrated, is vested in the rector and churchwardens of a parish, but the income derived from any lease thereof is by the Burial Act, 1857, s. 24, to be applied for the purposes of the parish as the vestry may direct, this power of the vestry is not a power relating to the affairs of the church within section 23 of the London Government Act, 1899, and is consequently transferred to the borough council under section 4 of the last-mentioned Act.—*WESTMINSTER CORPORATION V. ST. GEORGE'S, HANOVER SQUARE, C.A.*, 357; 1909, 1 Ch. 592.

## CAPITAL AND INCOME:—

*Lump sum payable by instalments for occupation of house—Death of tenant before instalments paid—Defraying part of debts out of income.*—Where a testator agreed to pay a lump sum by instalments for the occupation of a house, and died before the instalments were paid,

Held, that they were payable out of capital.

The rule in *Allhusen v. Whittell* (L. R. 4 Eq. 295) does not apply to an absolute gift with an executory gift over.—*HANBURY, RE COMISKEYE, HANBURY, Eve, J.*, 616.

## CHARITY:—

1. *Bequest—Failure of object after testator's death—Cy-pres*—A charitable bequest to a scheme for founding an institution, which scheme after the death of the testator and after the legacy was paid over, was abandoned, and the moneys received by the trustees returned to the donors, reverts to the testator's residuary estate, and does not fall to be administered by the Crown for some analogous charitable object.

*Re Slevin, Slevin v. Hepburn* (1891, 2 Ch. 236) distinguished.—*UNIVERSITY OF LONDON MEDICAL SCIENCES INSTITUTE FUND, RE, C.A.*, 302.

2. *Bequest—Uncertain object—Cy-pres—Inquiry as to object—Summons to vary certificate—Discharge of certificate—Practice.*—A testatrix made a charitable bequest to an uncertain object, and the court directed an inquiry as to what charity the testatrix meant. The master certified that a certain charity was the one meant, and another charity took out a summons to vary the certificate by substituting itself as the one meant.

Held, that the court was not bound to decide in favour of either of the two charities, but could discharge the certificate and order the fund to be applied cy-pres.—*LEWIS HILL, RE, DAVIES V. NAPPER, Eve, J.*, 228.

3. *Charitable bequest—Uncertainty—"Civil or religious purposes."*—A trust "for such purposes civil or religious" as the trustees shall appoint fails by reason of its uncertainty as a charitable trust even though the trustees are and must be members of a particular religion.

*Re Garrard* (1907, 1 Ch. 382) distinguished.—*THE FRIENDS' FREE SCHOOL, LIVERPOOL, RE, Eve, J.*, 733.

## CHEQUE:—See Banker, Company.

## COMPANY:—

1. *Debenture trust deed—Licensing Act, 1904—Compensation money—Purchase money—Capital moneys—Investment.*—Compensation money under the Licensing Act, 1904, received by the trustees of a debenture trust deed executed by a company owning licensed houses, may be treated as "purchase money" or "capital moneys" for the purpose of its application by them in accordance with the terms of the deed.

*Dawson v. Braine's Tadcaster Breweries (Limited)* (1907, 2 Ch. 359) followed.

Under a general power to invest such purchase money in real or leasehold property, such trustees may apply it in either the purchase or (if the security is sufficient) the mortgage of licensed messuages and premises belonging either to the company or to third parties.—*BENTLEY'S YORKSHIRE BREWERIES, RE, Warrington, J.*, 715.

2. *Debentures—Cheque in payment of interest—Failure to present cheque—Release of security.*—The mere acceptance of a cheque in payment of interest on debentures, and failure to present the cheque for payment, do not constitute a release of the security.

*Bunney v. Poyntz* (4 B. & Ad. 568) disapproved.—*J. DEFRIES & SONS (LIMITED), RE, Warrington, J.*, 697.



3. *Definition of company—Sale of business to foreign company*—*Ultra vires—Companies (Consolidation) Act, 1908* (8 Ed. 7, c. 69), ss. 192, 285.—A company cannot sell or transfer its business or property under section 192 of the Companies Consolidation Act, 1908, to a foreign company.

*Ex parte Fox* (L. R. 6 Ch. 192) distinguished.—*THOMAS v. UNITED BUTTER COMPANIES OF FRANCE, Eve, J., 733.*

4. *Directors—Appointment of directors—Notice convening meeting—Nature of business to be transacted—No mention of additional directors.*—The articles of association of a company provided that the notice of a general meeting should specify the general nature of the special business to be transacted. Notice was given of a meeting for the purpose of appointing three directors. At the meeting a resolution was carried appointing two additional directors.

Held, that the notice sufficiently indicated the business transacted, and therefore the additional directors were duly appointed.—*BETTS & Co. v. MACNAGHTEN, Eve, J., 521.*

5. *Injunction—Call on shares—Application to restrain.*—"The court will not restrain a company from making calls on its shares and enforcing them, even in a case where the shareholder has launched an action to try the question as to his liability, for in such action he can, by resisting payment, get the question of liability settled, and so obtain a remedy without having recourse to an injunction.—*TATHAM v. PALACE RESTAURANTS (LIMITED), Vacation Judge, 743.*

6. *Powers—Management—Resolution—Dissentient director—Confirmation at general meeting—Articles of association.*—A resolution was submitted to an extraordinary general meeting of the company and carried on a poll. The managing director, who had objected to the resolution on behalf of himself and other shareholders, thereupon commenced an action in the Chancery Division, and moved for an injunction to restrain the company and the two other directors from acting upon it. Warrington, J., dismissed the motion. The Court of Appeal, following *Automatic Self-cleansing Filter Syndicate Co. (Limited) v. Cunningham* (1906, 2 Ch. 34), granted the injunction, on the ground that the resolution was invalid, being inconsistent with the articles (53 SOLICITORS' JOURNAL, 150; 1909, 1 Ch. 311).

The House of Lords affirmed the decision of the Court of Appeal.—*SALMON v. QUIN & AXTENS, H.L., 575.*

7. *Memorandum of association—Alteration of the objects of company—Extension of area—Imposing a condition to change name of company—Companies (Memorandum of Association) Act 1890* (53 & 54 Vict. c. 62), s. 1, sub-section 5 (c).—The court has jurisdiction to confirm an alteration in the memorandum of association of a company registered under the Joint Stock Companies Acts.

In confirming an alteration to enlarge the area of operations the court will not impose a condition to change the name of the company if the company is not a trading company and incurs no risk by the alteration.—*TRUST AND AGENCY CO. OF AUSTRALASIA, RE, Eve, J., 48.*

8. *Promissory note—Signature by director of company—Personal liability—Companies Act, 1862, s. 47.*—The managing director of a company, which had power to borrow on promissory notes, signed a promissory note, "J. H. Smethurst's Laundry and Dye Works (Limited), J. H. Smethurst, Managing Director."

Held, reversing the decision of Channell, J. (1908, 1 K. B. 73), that as the authority of the drawer to make the note on behalf of the company was admitted, and there was no evidence to show that he signed the note otherwise than as agent for the company, the note must be treated as the company's note, for which the managing director incurred no personal liability.—*CHAPMAN v. SMETHURST, C.A., 340; 1909, 1 K. B. 927.*

9. *Shareholders' address book—Right of shareholder to copy—Motives of shareholder—Mandatory injunction—Companies Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 16), s. 10.—The right of a shareholder in a company to a copy of the shareholders' address book is a private right conferred on him as a member of the company, and does not in the least depend on his motives. The appropriate remedy in the event of the refusal of the company is a mandatory injunction directing them to supply a copy.—*DAVIS v. GAS LIGHT AND COKE CO., C.A., 399; 1909, 1 Ch. 708.*

10. *Shares—Sale—Special settlement—Settlement within a reasonable time.*—The plaintiffs purchased through a firm of stockbrokers 300 shares, which the latter procured from the vendors in a "lump" consisting of the shares in question and shares for other clients. The shares so purchased were for special settlement, which did not take place until nearly eight years after purchase. The main questions were, whether, under the circumstances of the purchase, privity was established between the parties, and whether it was an implied term of the contract in a sale of shares for special settle-

ment that the settlement should be made within a reasonable time.

Held, that privity of contract in such cases depended on the intention of the parties, and that in transactions subject to a special settlement a contract may be perfectly effective without an implication that the settlement must take place within a reasonable time.—*CONSOLIDATED GOLDFIELDS OF SOUTH AFRICA v. SPIEGEL, K.B.D., 245.*

See also Insurance, Libel, Practice, Revenue.

#### CONTRACT:—

*Sale of cinders, puddle or iron slag—Purchaser to remove same, seller giving free access—Slag claimed by third persons—Defect in seller's title—Damages.*—The plaintiff agreed to sell to the defendants cinders and puddle or iron slag lying at certain tips at 2s. 3d. per ton. The defendants were to remove what was sold, and the plaintiff was to give them free access to the tips. The agreement had been acted on for some time, when third parties, claiming the cinders and slag, barred the defendants from access to the tips. The defendants counterclaimed for damages for breach of contract in an action brought by the plaintiff. The county court judge found that the cinders and slag had become part of the ground or soil, and were not definite or detached heaps resting on the ground, and he held that the failure, if any, in the carrying out of the agreement arose from a defect in the plaintiff's title, and that therefore, on the principle laid down in *Bain v. Fothergill* (L. R. 7 H. L. 158), the defendants were not entitled to recover damages against the plaintiff. The defendants appealed.

Held, that this particular contract was not a contract for the sale of goods under the Sale of Goods Act, 1893, and that, the principle of *Bain v. Fothergill* (*supra*), being applicable to the case, the decision of the county court judge must be affirmed.—*MORGAN v. RUSSELL & SONS, K.B.D., 136; 1909, 1 K. B. 357.*

See also Bastardy, Fraud, Infant, Husband and Wife, Ship.

#### COPYRIGHT:—

*"Dramatic piece"—Pantomime sketch—Infringement—Cinema-ograph—Sale of films—"Cause to be represented"—Dramatic Copyright Act, 1833* (3 & 4 Will. 4, c. 15), ss. 1, 2.—The plaintiff complained that the defendants, who were makers and dealers in cinematograph films, represented, by means of a cinematograph film made and sold by them for the purpose of being exhibited at places of entertainment, a stage-play or dramatic piece, the copyright in which was vested in the plaintiff. Jelf, J., following *Tate v. Fullbrook* (1908, 1 K. B. 821), dismissed the action on the ground that, although the stage play as represented by the cinematograph was such a colourable imitation of the plaintiff's piece as to be an infringement, yet the piece was not a "dramatic piece" within the protection of the Act of 1833, and was, therefore, not capable of being the subject of copyright. The plaintiff appealed.

Held, dismissing the appeal, that the action was not maintainable, because the defendants by manufacturing and selling the films to purchasers did not thereby represent, or cause to be represented, the alleged piratical performances.—*KARNO v. PATHÉ FRÈRES, C.A., 228.*

#### CORPORATION:—

*Master and servant—Trade or business—Powers and duties—Accident—Workmen's compensation—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), ss. 4 (1), 13.—When a corporation, having power to do or not to do any act, determines to do it, the act is done in pursuance of its powers and duties within section 13 of the Workmen's Compensation Act, 1906, and if the corporation contracts with any other person to carry out the work in question, the corporation is liable as principal for any compensation that may be payable to a workman meeting with an accident under section 4 (1) of the Act as defined by section 13.—*MULROONEY v. TODD, C.A., 99; 1909, 1 K. B. 165.*

#### COSTS:—

*Security for costs—Costs of action—Trustees of a deed of separation—Insolvent plaintiff—Nominal plaintiff—Plaintiff with no beneficial interest.*—An insolvent plaintiff, who sues as trustee under a separation deed to recover alleged arrears of alimony which the husband had covenanted to pay to the trustee on behalf of the lady, and which the lady could not have sued for in her own name, although in no way beneficially interested in the subject-matter of the claim, is not such a "nominal plaintiff" as may be ordered to give security for the costs of the action.

*Greener (suing as Trustee of Goldberg) v. Kahn & Co. (Limited)* (1908, 2 K. B. 374) considered and explained.—*WHITE v. BUTT, C.A., 12; 1909, 1 K. B. 50.*

See also Bankruptcy, County Court, Mortgage, Solicitor.

#### COUNTY COURT:—

1. *Costs—Action discontinued—No power to certify for costs on "higher scale"—County Courts Act, 1888* (51 & 52 Vict. c. 43),

ss. 118, 119—*County Court Rules*, 1903-8, IX. 1; LIII. 7.—Where the plaintiff in a county court action gives notice of discontinuance under ord. 9, r. 1, the judge, in awarding costs to the defendant under that rule, has no power to direct them to be taxed on a scale higher than that ordinarily applicable to the sum claimed by the plaintiff.—*FAWCETT v. HORSFIELD, K.B.D.*, 61.

2. *Execution—Payment to bailiff by claimant*—"Amount of the value of the goods claimed"—*Payment of larger sum—Duty of bailiff to withdraw from possession—County Courts Act*, 1888 (51 & 52 Vict. c. 43), s. 156.—A claimant who had put in a claim to goods seized by the high bailiff of a county court on a warrant of execution for £18 12s., on September 7th, 1908, deposited with the high bailiff the sum of £26 under section 156 of the County Courts Act, 1888, as the amount of the value of the goods claimed. . . . The high bailiff, who accepted this sum, and paid it into court, did not withdraw from the possession of the goods, but continued in possession of them until the 3rd of October, 1908, when the execution creditor admitted the title of the claimant to the goods. On taxation the high bailiff claimed from the execution creditor possession fees from the 7th of September to the 3rd of October.

Held that the high bailiff was not entitled to these possession fees.—*NEWSUM v. JAMES, K.B.D.*, 521.

3. *Judgment debtor—Default of appearance—Fine—Application of fine in part payment of debt—Jurisdiction—County Courts Act*, 1888 (51 & 52 Vict. c. 43), s. 111.—A fine imposed on a debtor who fails to appear to a judgment summons is applicable towards indemnifying the creditor only against any loss that he may actually have sustained by reason of the default, and there is no jurisdiction in a county court judge to order the fine to be applied in reduction of the debt.—*REX v. SNAGGE, C.A.*, 285; 1909, 1 K. B. 644.

4. *New trial—Discretion of county court judge to grant new trials—Fresh evidence—County Courts Act*, 1888 (51 & 52 Vict. c. 43), s. 93.—The power to grant new trials conferred upon the judges of county courts by section 93 of the County Courts Act, 1888, is not an absolute power to be exercised upon any grounds which the judge may think fit, but is subject to the power to grant one for such reasons in law as a superior court would deem sufficient for a new trial.

So held by Lord Alverstone, C.J., and Farwell, L.J., following *Murtagh v. Barry* (24 Q. B. D. 632), *Fletcher Moulton, L.J.*, dissenting.—*DEAN v. BROWN, C.A.*, 615.

5. *Procedure—Defendant living at a distance, sued where cause of action arose—Plaintiff to give security—Order by registrar—No appeal from, to judge—County Court Rules*, 1903 and 1904, ord. 12, rr. 9 and 11 (8).—Where a plaintiff has obtained leave to bring an action in the county court of a district where his cause of action wholly or in part arose, under section 74 of the County Courts Act, 1888, and the defendant, residing more than twenty miles from the court, sends to the registrar, pursuant to ord. 12, r. 9, of the County Court Rules, 1903 and 1904, an affidavit which appears to the registrar to disclose a good defence upon the merits, and the registrar orders the plaintiff to deposit in court the sum of £20, no appeal lies to the county court judge under ord. 12, r. 11 (8), from the registrar's decision.—*PORTER v. LONDON AND MANCHESTER INSURANCE CO., K.B.D.*, 342; 1909, 2 K. B. 30.

See also Master and Servant.

#### COVENANT:—

1. *Breach—Continuing breach—Building estate—Covenant by purchaser—Breach by his lessee—Liability of covenantor for breach by assign*.—A purchaser covenanted for himself and his assigns not to build in a certain way. He granted a building lease and the lessee committed a breach of the covenant. The lessee became bankrupt, and the covenantor re-entered into possession.

Held, that the breach was not a continuing breach, and that the covenantor was not liable for the breach by his lessee.

A covenant by a purchaser for himself and his assigns that he will not do a certain act is not equivalent to a covenant for himself and his assigns that he and his assigns will not do the particular act.—*POWELL v. HEMSLEY, Ex' J.*, 322; 1909, 1 Ch. 680.

2. *Building estate—Covenant not to erect building for the purposes of offensive trade—Erection of advertisement hoarding—Breach of covenant*.—Where land was sold as a building estate, subject to restrictive covenants, one of which was a covenant not to erect any building for the purpose of carrying on any noisome, offensive, or dangerous trade or calling.

Held (by Cozens-Hardy, M.R., and Buckley, L.J., *Fletcher Moulton, L.J.*, dissenting), that the erection of an advertisement hoarding was a breach of the covenant.—*NUSSEY v. PROVINCIAL BILLPOSTING CO., C.A.*, 418; 1909, 1 Ch. 734.

3. *Compensation for subsidence—Benefit of covenant—Covenantee not a party to claim—Real Property Act*, 1845 (8 & 9 Vict. c. 106),

s. 5—*Conveyancing and Law of Property Act*, 1881 (44 & 45 Vict. c. 41), s. 58 (i).—By an indenture of lease of coal strata, made in 1887, "the lessee" covenanted with the lessor and, as separate covenants, "with other the owners or owner, occupiers or occupier" of the surface land to pay compensation for damage caused by working the coal. The word "lessee" was by a definition clause defined to include "his executors, administrators, and assigns." The devisees of an owner of surface land at the date of the lease and the successors in title of other owners sued the representatives of the original lessee for damage to their property by subsidence of the surface.

Held, that the covenant was one respecting a tenement or hereditament within section 5 of the Real Property Act, 1845; that the covenant with the owners "for the time being" included owners in existence at the date of the lease, with whose "heirs and assigns" it must be deemed, as it related to land, to have been made, by virtue of the Conveyancing and Law of Property Act, 1881, s. 58 (i), and consequently it enured for the benefit of all the plaintiffs, who were entitled to sue the lessee's trustees and executors for damages.

Judgment of the Court of Appeal, *sub nom. Forster v. Elvet Colliery Co. (Limited) and Others* (1908, 1 K. B. 629), affirmed.—*FORSTER v. DYSON, H.L.*, 149; 1909, A. C. 98.

See also Landlord and Tenant.

#### CRIMINAL LAW:—

1. *Appeal against sentence—Plea of guilty—Sentence quashed—Power to pass sentence in substitution—Criminal Appeal Act*, 1907 (7 Ed. 7, c. 23), s. 4 (3).—The words in section 4 (3) of the Criminal Appeal Act, 1907, "by the verdict"—warranted in law "by the verdict"—may be disregarded; and where an appellant who has pleaded guilty appeals against his sentence, the Court of Criminal Appeal, if they quash the sentence passed at the court of trial, may pass on the appellant another sentence warranted in law in substitution therefor, although there has been no verdict against the appellant.

*REX v. Davidson* (1909, 25 T. L. R. 352), decided by the same judges, dissented from.—*REX v. ETTRIDGE, C.C.A.*, 401; 1909, 2 K. B. 24.

2. *Appeal against sentence—Principles that guard the court in reducing sentence—Criminal Appeal Act*, 1907 (7 Ed. 7, c. 23), s. 3 (c) and 4 (3).—Where a prisoner has been tried, and the judge at the court of trial has heard all the evidence and seen the witnesses, the Court of Criminal Appeal will not interfere with the sentence imposed unless the judge has gone wrong in principle, although members of the court may be of opinion that they would not have inflicted so severe a sentence. But where the prisoner has pleaded guilty, the Court of Criminal Appeal are in as good, or in nearly as good, a position to consider what is the proper sentence on reviewing the sentence as the court of trial is on its imposition, and therefore, in such cases, the Court of Criminal Appeal will reduce a sentence which is in their opinion too severe.—*REX v. NUTTALL, C.C.A.*, 64.

3. *Constable—Right to seize partridge eggs—Conviction quashed—Value of eggs to be returned—1 & 2 Will. 4, c. 32, s. 24—Prevention of Poaching Act*, 1862 (25 & 26 Vict. c. 114), s. 2.—By section 2 of the Prevention of Poaching Act, 1862, which deals with the seizure by a constable of game in the possession of a person on a highway whom the constable may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of such game, and also with the proceedings to be taken against such person, provides that "if no conviction takes place, the game . . . or the value thereof shall be restored to the person from whom it had been seized."

Held that the "value" to be restored within the meaning of this section is not the value of the game when it was seized, but the value "when no conviction takes place," i.e., in the case under consideration, when the conviction was quashed by the High Court.

Two constables seized 564 partridges' eggs on a highway in the possession of the plaintiff's servant. Partridges' eggs are game within the meaning of section 2 (*supra*). The constables having seized the eggs, proceeded against the plaintiff not under section 2 (*supra*) but under section 24 of 1 & 2 Will. 4, c. 32, which gave the constables no power to seize the eggs and provided for the imposition of a higher penalty than that under the Act of 1862. The plaintiff was convicted and fined under section 24, but the conviction was quashed by the High Court. After the conviction was quashed the justices made an order for the destruction of the eggs under the Police Property Act, 1897. The plaintiff brought an action against the two constables in detinue for the return of the eggs and alternatively in trover. The defendants obtained judgment in the county court.

Held, that these eggs not being the subject of larceny, since the constables took proceedings under the Act of 1831, which gave them no power to seize the eggs, they could not be allowed to say they



had the right to seize them, because they might have seized them had they been going to proceed under the Act of 1862. Judgment, therefore, was entered for the plaintiff for agreed damages at £18 16s.—*Stowe v. Benstead, K.B.D.*, 543; 1909, 2 K. B. 415.

4. *Evidence—Cross-examination as to alleged previous offence—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f) (i).*—C. was indicted under section 5 of the Criminal Law Amendment Act, 1885, and the prosecutrix gave evidence that at the time the offence was committed C. told her he had had relations with another servant girl before, and that he hoped the prosecutrix would be as loving to him as that girl had been.

Held that C., on giving evidence, could be cross-examined (1) as to whether he had had relations with this other girl, and (2) as to whether this girl was then about fifteen years of age, on the ground that proof that C. had previously committed such an offence (under section 5) would be admissible evidence to show that he was guilty of the offence wherewith he was then charged within the meaning of section 1 (f) (i) of the Criminal Evidence Act, 1898.—*Rex v. Chitson, C.C.A.*, 746.

5. *Evidence—Two prisoners charged jointly—Evidence by one on behalf of other—"Competent witness for the defence"—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1.*—Where two prisoners are charged jointly in the same indictment, and one of them gives evidence on behalf of the other, he is a "competent witness for the defence" within the meaning of section 1 of the Criminal Evidence Act, 1898.—*Rex v. McDonnell, C.C.A.*, 745.

6. *Evidence of prisoner—Imputation on character of witness for prosecution—Relevancy—Questions as to previous convictions—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f) (ii).*—A prisoner when giving evidence cannot be asked questions as to his previous convictions under section 1 (f) (ii) of the Criminal Evidence Act, 1898, on the ground that he has made a statement as to the conduct of a witness for the prosecution to his discredit, closely connected with what is relevant to the defence (even though when carefully and logically considered it is not relevant)—conduct which is not made the substance of the defence, and was a matter upon which, whether it was judicious or not, it was natural for the prisoner to comment.—*Rex v. Preston, C.C.A.*, 322; 1909, 1 K. B. 568.

7. *Habitual drunkard convicted four times of drunkenness within twelve months—Sentence—No power to impose imprisonment as well as detention—Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2 (1).*—A person convicted on indictment under section 2 (1) of the Inebriates Act, 1898, can only be sentenced to detention for a term not exceeding three years in any certified inebriate reformatory the managers of which are willing to receive him, and not to imprisonment as well.—*Rex v. Briggs, C.C.A.*, 164; 1909, 1 K. B. 381.

8. *Incorrigible rogue—"Having been twice previously convicted of being an idle and disorderly person"—Criminal Appeal Act, 1907 (7 Ed. 7, c. 23), ss. 19 (a), 20 (1)—Vagrancy Act, 1824 (5 Geo. 4, c. 83), ss. 3, 4, 5.*—The sentence imposed by quarter sessions on a conviction by petty sessions of a man as an "incorrigible rogue," in that he "did unlawfully wander abroad to beg alms, the said defendant having been twice previously convicted of being an idle and disorderly person," under section 5 of the Vagrancy Act, 1824, is bad if there is no evidence before petty sessions that the man has been previously convicted as a "rogue and vagabond," although it appears that, having been twice previously convicted as "an idle and disorderly person," he might on the second occasion have been convicted as "a rogue and vagabond."—*Rex v. Johnson, C.C.A.*, 288; 1909, 1 K. B. 439.

9. *Jurisdiction—Offence of obtaining money by false pretences—Money sent to Holland—Place where offence committed.*—If a false pretence were made in London to induce persons to part with money and send it to Middelburg, Holland, and the postal orders and letters containing the money were posted in London for transmission to Middelburg, there to be received by the person making the false pretence, the offence of obtaining money by false pretences would be committed in London, where the postal orders and letters were posted.

*Rex v. Jones* (1 Den. C. C. 551 and 609) followed.

*Evidence—Prima facie case for prosecution—Evidence in rebuttal—Burden of proof.*—The proper direction as to *onus* of proof where *prima facie* evidence has been given on the part of the prosecution, which, if unanswered, would raise a presumption upon which the jury might be justified in finding a verdict of guilty, and the defendant has called evidence to rebut that presumption, is that if the evidence in rebuttal raises in the minds of the jury a reasonable doubt as to the guilt of the defendant, they should acquit him, as the *onus* of proof still lies upon the prosecution. If upon the whole evidence the jury are left in a real state of doubt,

the prosecution has failed to satisfy the *onus* of proof which lies upon them.

*Appeal—Substantial misdirection—Point raised decided in favour of appellant—No substantial miscarriage of justice—Criminal Appeal Act, 1907 (7 Ed. 7, c. 23), s. 4 (1).*—The proviso to section 4 (1) of the Criminal Appeal Act, 1907, is: "Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred."

The court will not dismiss the appeal under this proviso in a case where there has been substantial misdirection, unless they can say that the jury, if properly directed, would have returned the same verdict.

*Rex v. Dyson* (1908, 72 J. P. 272) considered.

The court again expressed the opinion that it was necessary in the interests of justice that they should have the power of ordering a new trial in exceptional cases.—*Rex v. Stoddart, C.C.A.*, 578.

10. *Larceny—Man taking his own property from the possession of the sheriff.*—On a trial for larceny of the goods of a sheriff, the jury found that the goods were the property of the prisoner, and that he had taken them whilst they were in the possession of the sheriff, who had seized them on an execution against the prisoner's wife, thinking that they were hers.

Held, that on these findings the verdict was one of not guilty.—*Rex v. Knight, C.C.A.*, 101.

11. *Murder—Crime involving intent—Defence of drunkenness—Notice of application for leave to appeal—Amendment of, to notice of appeal—Criminal Appeal Act, 1907 (7 Ed. 7, c. 23), s. 7.*—The law as to the defence of drunkenness in a prosecution for a crime which involves an intent, as, for instance, an intent to do grievous bodily harm, is as follows: "A man is taken to intend the natural consequences of his acts. This presumption may be rebutted (1) in the case of a sober man in many ways; (2) in the case of a man who is drunk by shewing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, i.e., likely to inflict serious injury. If this be proved, the presumption that he intended to do grievous bodily harm is rebutted."

A notice of application for leave to appeal on grounds involving questions of fact may be amended into a notice of appeal on a ground involving only a question of law. The court so amended an application for leave to appeal against a conviction for murder, as by section 7 of the Criminal Appeal Act, 1907, they were prevented from extending the time for giving notice of appeal.—*Rex v. Mead, C.C.A.*, 378; 1909, 1 K. B. 895.

12. *Obtaining credit by false pretences, but without an intention to defraud—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13 (1).*—There is no offence under section 13 (1) of the Debtors Act, 1869, for obtaining credit under false pretences in incurring a debt or liability, unless there is proved an intention to defraud.—*Rex v. Muirhead, C.C.A.*, 164.

13. *Perjury—Arbitration under Workmen's Compensation Act, 1906—Corrupt and wilful false evidence in judicial proceeding—Perjury at common law—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (3); Schedule II., ss. 1, 2, 3, and 4—Workmen's Compensation Rules, 1907, Nos. 2 (1) and 27.*—Arbitration before a county court judge under section 1 (3) of the Workmen's Compensation Act, 1906, is a judicial proceeding, and an indictment charging perjury at common law in such a proceeding is good.—*Rex v. Crossley, C.C.A.*, 214; 1909, 1 K. B. 411.

14. *Police spy—Evidence of—Corroboration—Accomplice.*—The evidence of a police spy is not to be treated as that of an accomplice.

*Reg. v. Mullins* (1848, 3 Cox C. C. 526, 12 J. P. 776) followed.—*Rex v. Bickley, C.C.A.*, 402.

15. *Previous convictions—Proof of—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 18.*—In addition to a certificate of conviction in support of previous convictions, proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted must be given.—*Rex v. Drabble, Quarter Sessions*, 449.

16. *Receiving—Evidence of possession by prisoner of property stolen within preceding twelve months—"Preceding period of twelve months"—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19.*—The words "preceding period of twelve months" in section 19 of the Prevention of Crimes Act, 1871, refer to the twelve months preceding the commencement of the proceedings against the accused, and not to the period preceding the commission of the offence charged in such proceedings.—*Rex v. Harding, C.C.A.*, 762.

## DENTIST:—

1. "Description implying that he is a person specially qualified to practise dentistry"—*Dentists Act, 1878* (41 & 42 Vict. c. 33), s. 3.—The words "specially qualified" in section 3 of the *Dentists Act, 1878*, refer to special personal qualifications to practise dentistry, and not to the special qualifications or professional hall-marks mentioned in the other sections of the Act.—*BARNES v. BROWN, K.B.D.*, 14; 1909, 1 K. B. 38.

2. *Unregistered person—Description—Specially qualified to practise dentistry—Dentists Act, 1878* (41 & 42 Vict. c. 33), s. 3.—Inasmuch as the *Dentists Act, 1878*, does not make it illegal for an unqualified person to practise dentistry, it is not illegal for him to announce that he does so. Accordingly when three partners, none of whom were registered as dentists or were qualified medical practitioners, fixed upon the partnership premises a notice in the following terms:—*Bellerby, Heyworth & Bowen. Finest Artificial Teeth, Painless Extraction. Advice Free. Mr. Heyworth Attends Here.*

Held, that the notice did not allege that the partners or any of them were specially qualified to practise dentistry, nor constitute an offence against section 3 of the *Dentists Act, 1878*.

*Emslie v. Paterson* (24 R. [Just. Cas.] 77) followed.

*Barnes v. Brown* (1909, 1 K. B. 38) overruled.—*BELLERBY v. HEYWORTH, C.A.*, 576.

## DISCOVERY.—See Practice.

## DIVORCE:—

1. *Collusion—Wife's petition—Financial assistance from husband's sister—No collusion.*—Where a wife, petitioner in a suit for dissolution of marriage, received monetary assistance from her husband's sister (presumably his agent),

Held, this was not a collusive arrangement between the petitioner and the respondent.—*MALLEY v. MALLEY, P.D.*, 617.

2. *Damages—Death of co-respondent—Liability of executor—Payment out of estate—R.S.C. XLII. 23.*—Where a co-respondent, who had been ordered to pay damages and taxed costs into court, died, after decree nisi, it was

Held, that the executor was liable to pay them out of the co-respondent's estate.—*BRYDGES v. BRYDGES, P.D.*, 377; *Reversed*, 1909, P. 187.

3. *Desertion—Separation order by police magistrate—Adultery of husband—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), ss. 16, 27—*Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), ss. 4, 5.—A wife obtained a separation order from a police magistrate under the *Summary Jurisdiction (Married Women) Act, 1895*, on the ground that her husband had deserted her, the desertion having taken place less than two years before the order. The husband having subsequently committed adultery, the wife, after the expiration of two years from the time that her husband left her, filed a petition for divorce.

Held, by the full Court of Appeal, that the husband had not been guilty of desertion for "two years or upwards," as his desertion in law ceased to run from the date of the order, and the wife, therefore, was not entitled to a divorce.

*Dodd v. Dodd* (1906, P. 189) followed.—*HARRIMAN v. HARRIMAN, C.A.*, 265; 1909, P. 123.

4. *Discovery—Intervention by King's Proctor—Order for discovery—Appeal in chambers.*—Where the King's Proctor has intervened in a suit, the court will not make an order upon him to give the petitioner discovery of documents.—*D. v. D., P.D.*, 359.

5. *Husband's petition—Adulterous petitioner—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 31—*Decree nisi granted.*—Where a husband, who had himself been guilty of adultery, petitioned for a divorce on the ground of his wife's adultery, the court, on being satisfied that the allegation was proved, granted a decree nisi.—*ROSENZ v. ROSENZ, P.D.*, 400.

6. *Husband petitioner—Guilty of statutory desertion—Discretion—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 31—*Decree nisi.*—The court will exercise its discretion in favour of a petitioner in a divorce suit, even though guilty of statutory desertion.—*MULLEY v. MULLEY, P.D.*, 469.

7. *Irland—Decree a mensa et thora—Co-respondent not within the jurisdiction—No action for damages instituted against co-respondent—Evidence—Procedure.*—Where a decree *a mensa et thora* has been obtained by the husband in the Irish courts, but owing to the co-respondent cited not being within the jurisdiction, no action at law could be brought against him.

Held, that the facts alleged by the petitioner being strictly proved, the House could order a Bill to dissolve the marriage of the petitioner with his wife to be read a second time.—*TORRENS' DIVORCE BILL, H.L.*, 396.

8. *Judicial separation—Marriage in England—Hindu and Englishwoman—Validity.*—Where a Hindu, domiciled in India, married in England an Englishwoman, domiciled in this country, and where the court was satisfied that the charge of desertion had been proved, it was

Held, that the marriage was valid and binding, and that a decree of judicial separation could be granted to the wife.—*VENUGOPAL CHETTI v. VENUGOPAL CHETTI, P.D.*, 163.

9. *Judicial separation—Wife's suit—Divorce proceedings by husband in foreign country—Injunction to restrain.*—An injunction may be granted to restrain a respondent from prosecuting divorce proceedings in a foreign country if the court is satisfied that they have been commenced in order to harass the petitioner and with the hope of compelling her to abandon her suit against him in this country.—*VARDOPULO v. VARDOPULO, P.D.*, 377.

10. *Nullity—Notice to attend before medical inspectors—Proof—Practice.*—An affidavit is sufficient proof that notice has been served upon a respondent in a nullity suit to appear before medical inspectors and has failed to do so.—*P. v. P., P.D.*, 486.

11. *Nullity—Restoration of dowry—Procedure—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 17—*Matrimonial Causes Act, 1859* (22 & 23 Vict. c. 61).—A registrar has no power to make an order under section 17 of the *Married Women's Property Act, 1882*, but a report made by him upon an application under this section may be confirmed by a judge of the High Court.—*JOSEPH v. JOSEPH, P.D.*, 400; 1909, P. 217.

12. *Petition amended—Personal service dispensed with—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 42.—When a respondent in India, who had been served with the citation and petition, had not appeared, and the petition was amended by changing the name only of the woman with whom adultery was alleged, the court allowed personal re-service of the amended petition to be dispensed with.—*ROBERTS v. ROBERTS, P.D.*, 304.

See also Practice.

## EDUCATION:—

*Non-provided school—Supply of water to—Maintenance and efficiency of school—Liability of local education authority—Education Act, 1902* (2 Ed. 7. c. 42), ss. 5 and 7; *Schedule I., B. 4.*—A local education authority has power, under the *Education Act, 1902*, to contract with a water company for the supply of water to a non-provided school.—*TROWBRIDGE WATER CO. v. WILTS COUNTY COUNCIL, K.B.D.*, 448; 1909, 1 K. B. 824.

See also Revenue.

## ELECTION, DOCTRINE OF.—See Appointment.

## ELECTION LAW:—

1. *Parliamentary registration—Successive occupation of two dwelling-houses during the qualifying period—Rates not paid during qualifying period—Representation of the People Act, 1867* (30 & 31 Vict. c. 102), s. 3.—Where an occupier occupies two premises during the whole of the qualifying period in immediate succession as two dwelling-houses in the same parish, and has paid all rates due in respect of the dwelling-house first occupied; but no one has been rated in respect of the dwelling-house subsequently occupied between the commencement of the occupation and the termination of the qualifying period, although the then current rate had been made (on the 6th of April) before the commencement of the occupation (June), and the occupier has made no claim to be rated in respect of those premises, and no tender or payment under 2 & 3 Will. 4, c. 45, s. 30, and 31 & 32 Vict. c. 58, s. 30, of the sum which would have been due had he been rated—in such case the occupier is not entitled to have his name registered in Division I. of the occupiers' list of the parish.

*Palmer v. Wade* (38 SOLICITORS' JOURNAL, 114; 1894, 1 Q. B. 268) followed.—*PITTS v. MICHELMORE, K.B.D.*, 62; 1909, 1 K. B. 227.

2. *Parliamentary registration—Prima facie ground of objection—Evidence as to the great majority of cases—Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), s. 28 (10).—Where objection was taken at a revising barrister's court to the names of persons being retained on the occupiers' list and the objector gave evidence as to each person, which he submitted was *prima facie* proof of the ground of his objection that the persons were not occupiers, and the revising barrister then heard evidence from which he found that in the cases where houses of this description were occupied by others in addition to the landlord, the conditions "in the great majority of cases" were such as shewed that the voters in such houses were occupiers, and he therefore retained the names of the persons objected to on the register.

The court ordered the barrister to complete his revision on the ground that he had not considered the circumstances of each particular case, but had considered a class of cases within which the



voter might or might not fall.—*KENT v. FITTALL* (No. 3), *K.B.D.*, 48; 1909, 1 K. B. 215.

3. *University franchise—Right of women graduates to vote—Representation of the People (Scotland) Act, 1868* (31 & 32 Vict. c. 48), ss. 27, 28.—*Universities Elections Amendment (Scotland) Act, 1881* (44 & 45 Vict. c. 48), s. 2 (3), (10), (16).—*Universities (Scotland) Act, 1889* (52 & 53 Vict. c. 55), s. 14 (6).—By section 27 of the Representation of the People (Scotland) Act, 1868, every person whose name is for the time being on the register . . . of the general council of such university, shall, if of full age, and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such university. By section 14 (6) of the Universities (Scotland) Act, 1889, power is given to each university to admit women to graduation. By an ordinance of the University Commissioners, acting under the power given by the Act of 1889, which dealt purely with academic as distinguished from political matters, women were made eligible for graduation, and thus were introduced into the university councils. The appellants were five lady graduates, whose names had been duly registered as such, and they claimed the right to vote at the forthcoming election of a member of Parliament to represent the Universities of St. Andrews and Edinburgh.

Held, dismissing the appeal, that as when the Act of 1868 was passed the universities did not receive women as students, the "persons" contemplated in the enfranchisement of the Scotch graduates were limited to "men," and the ordinance of the University Commissioners under the Act of 1889, by which women were made eligible for graduation, could not therefore confer by implication the privilege of the franchise on a class to which it was not given by the Act which created the franchise.—*NAIRN v. ST. ANDREWS UNIVERSITY, H.L.*, 161; 1909, A. C. 147.

EMPLOYER AND WORKMAN.—See Master and Servant.

ESTATE DUTY.—See Revenue.

ESTOPPEL.—See Banker, Lease, Libel.

EXECUTION:—

*County Court—Bankruptcy—"Execution" by high bailiff "in respect of a judgment for a sum exceeding £20"—Obligation to retain money paid to avoid sale for fourteen days—Bankruptcy Act, 1890, s. 11 (2).*—Where, on an execution by the high bailiff, the money which is paid to avoid sale of the goods seized, and which discharges the execution, is less than £20, there is no "execution in respect of a judgment for a sum exceeding £20" within the meaning of section 11 (2) of the Bankruptcy Act, 1890, although the high bailiff has previously levied on goods for more than £20 to cover the possible expenses of "possession money" and the costs which might have been incurred for appraisal and sale of the goods, and therefore the high bailiff need not retain the money so paid for fourteen days in accordance with the terms of that section.—*WILLEY v. HUCKS, K.B.D.*, 288; 1909, 1 K. B. 760.

See also County Court.

EXECUTOR:—

*Retainer—Debt to partnership—Right to retain simple contract debt against specialty debt—Hinde Palmer's Act, 1869* (32 & 33 Vict. c. 46)—*R.S.C. ord. 48a, rr. 1 and 10.*—An executor of an insolvent estate claimed to retain a simple contract debt due by the estate to a firm of which he was a partner against a specialty debt due by the estate to the defendant.

Held, firstly, that the executor's right to retain a partnership debt was not affected by R.S.C. ord. 48a, and, secondly (against the opinion of the learned judge, but following the cases and practice of the Chancery Division for the last twenty years), that the executor had no right to retain the simple contract debt against the specialty debt. Whether there is any distinction in principle between the executor's right to prefer creditors and his right to retain his own debt, *quære*.

Observations on *Re Samson* (1906, 2 Ch. 584).—*JENNES, RE, Neville, J.*, 376.

See also Divorce.

FRAUD:—

*Contract—Clause creating a practical monopoly in certain classes of machines—Repudiation.*—The appellants had acquired a practical monopoly in Canada for the sale of machines used in the process of the manufacture of boots and shoes. They leased their machines to customers for the term of twenty years, the leases containing a clause which ran as follows:—"The leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted, or the soles stitched on welt sewing, or sole-stitching machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any turn boots, shoes, or other footwear the soles of which

are or shall be attached to their uppers by turn-sewing machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any boots, shoes, or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any lasting or pegging or metallic machinery not leased to the lessee by the lessor or its assignor." In an action for breach of this clause, brought by the appellants against the respondents in Canada, the respondents successfully pleaded *inter alia* (1) that they had been induced to take the machines under an impression fraudulently brought about by the conduct of the appellants that the appellants had the sole patent rights of these machines, and that if they used machines by other makers they might be liable in actions for infringement; and (2) that the covenant creating in effect a monopoly was void as being in restraint of trade.

Held, that the appellants were entitled to judgment, as there was no evidence that, immediately on, or at least within a reasonable time after, their discovery of the fraud, the respondents had elected to avoid the lease, and accordingly repudiated them. A contract into which a person may have been induced to enter by false and fraudulent representation is not void, but merely voidable at the election of the person defrauded after he has had notice of the fraud. Unless and until he makes his election, and by word or act repudiates the contract, or expresses his determination not to be bound by it (which is but a form of repudiation), the contract remains as valid and binding as if it had not been tainted with fraud at all.

*Clough v. London and North-Western Railway Co.* (L. R. 7 Ex. 26), approved by Lord Blackburn in *Erlanger v. New Sombrero Phosphate Co.* (3 A. C. 1218), and by Lords Watson and Davey in *Aaron's Reefs v. Twiss* (1896, A. C., at pp 290 and 294), followed.—*UNITED SHOE MACHINERY CO. OF CANADA v. BRUNET, P.C.*, 396; 1909, A. C. 330.

See also Insurance, Practice.

GAMING:—

*Foreign gaming—Money lent abroad for gaming—Right to recover—Gaming Acts, 1710* (9 Anne. c. 14), s. 1, and 1835 (5 & 6 Will. 4. c. 41), s. 1.—The plaintiff lent money to a friend while at Monte Carlo, which he knew would mainly be used for playing roulette at the Casino.

Held, that, as gambling at the Casino was not illegal at Monte Carlo, where the contract was made, the money advanced could be recovered back in an action instituted in the English courts.

*Quarrier v. Colston* (Ph. 147) followed.

Decision of *Bray, J.* (24 T. L. R. 856), affirmed.—*SAXBY v. FULTON C.A.*, 397.

HIGHWAY:—

1. *Bridge—Bridge carrying road over railway—Maintenance—North Midland Railway Act* (6 & 7 Will. 4. c. cvii), s. 73.—A railway company under the authority of an Act, passed prior to the Railway Clauses Consolidation Act, 1845, carried a turnpike road over their line of railway by means of a bridge and approaches thereto. The Act provided that "where any bridge shall be erected for carrying any turnpike road . . . over the said railway, the road over such bridge shall be formed, and at all times be continued, of such width as to leave a clear and open space between the fences of such road of not less than 25 feet, for the purposes of a turnpike road . . ."

Held that, on the true construction of the section, the railway company were liable to maintain the bridge and the road over it and the approaches thereto.—*ATTORNEY-GENERAL v. MIDLAND RAILWAY CO., C.A.*, 520.

2. *Dedication—Land in settlement—Possibility of dedication—Tenancy for life with remainder in fee—Presumption—Acquiescence.*—When land is limited to a tenant for life with a remainderman in fee, both of whom are *sui juris*, it is possible for the tenant for life, and remainderman together to dedicate a road over the land to the public.—*FARQUHAR v. NEWBURY RURAL DISTRICT COUNCIL, C.A.*, 46; 1909, 1 Ch. 12.

3. *Dedication by railway company—Disused tramway—Superfluous land—Power of sale subject to right of pre-emption by adjoining owners.*—A railway having superfluous land adjoining a highway, and having power to sell such land subject to a right of pre-emption in the adjoining landowners, can dedicate such land to the public, notwithstanding such right of pre-emption.—*COATS v. HEREFORDSHIRE COUNTY COUNCIL, Eve, J.*, 245.

4. *Dedication by railway company—Strip of land adjoining a highway—Disused tramway—Acts of ownership.*—When one finds an owner alive to the necessity of evidencing his continued possession by periodical perambulations, active to prevent any encroachment upon his soil and warning trespassers, and at the same time permitting the passage of the public over the surface of the soil of which he is asserting his ownership, these are cogent

grounds for attributing to him a dedication to the public.—*COATS v. HEREFORDSHIRE COUNTY COUNCIL* (No. 2), *Eve, J.*, 543.

5. *Level crossings—Repairs—Inclined approaches—Northern and Eastern Railway Co. Act, 1836* (6 & 7 Will. 4, c. cliv.), s. 31.—By a private Act of 1836 the defendant company were authorized to construct a railway. Section 31 of that Act contained provisions of a character similar to those in section 16 of the Railways Clauses Consolidation Act, 1845, authorizing the company, *inter alia*, to make bridges, inclined planes, &c., and to divert and alter highways for the purpose of carrying them over, under, or by the side of the railway. Under this Act the company, for the purpose of carrying public carriage roads over the railway by level crossings where the railway was raised on an embankment, formed inclined approaches to the crossings.

Held, affirming the decision of Jelf, J. (reported 1909, 1 K. B. 368), that the company were liable for the maintenance of the approaches and the portion of the highways on the approaches as well as the actual level crossings.—*HERTFORDSHIRE COUNTY COUNCIL v. GREAT EASTERN RAILWAY CO., C.A.*, 575; 1909, 2 K. B. 403.

6. *Repair—Extraordinary traffic—Limitation of time for bringing action—Locomotives Act, 1898* (61 & 62 Vict. c. 29), s. 12 (1).—Where damage is done to roads by reason of a particular building contract, which involves several kinds of work, the highway authority have, under section 12 (1) of the Locomotives Act, 1898, six months within which to bring an action from the completion of the contract as a whole, and not merely six months from the completion of the contract for the particular kind of work which did the damage.—*CARLISLE RURAL COUNCIL v. CARLISLE CORPORATION, C.A.*, 228; 1909, 1 K. B. 471.

7. *Repair—Extraordinary traffic—Limitation of time for bringing action—Locomotives Act, 1898* (61 & 62 Vict. c. 29), s. 12 (1).—The words "completion of the contract or work" in section 12 (1) of the Locomotives Act, 1898, mean completion of the constructional work under the contract, in consequence of which haulage has to be done and damage to roads arises. Accordingly, where a contract was for the construction of a watertight reservoir, it was held that the work was completed, not at the date when the water was first let into the reservoir, but at the date when the reservoir was finally rendered watertight.—*REIGATE RURAL COUNCIL v. SUTTON WATER CO., C.A.*, 243.

8. *Repair—Whole width of surface of road metalled at once—Death of horse from over-exertion in pulling load over road—Negligence of local authority—Consequence of negligence.*—In an action brought to recover damages for the death of his horse, which died from over-exertion in pulling a wagon over loose stones laid by the defendants on a highway in the course of repairing it, the plaintiff alleged negligence on the defendants' part, especially in that an excessive thickness of stone was laid over the whole of the surface of the road at one time. The jury found for the plaintiff; but—

Held, on appeal, that although it was negligence on the part of the local authority to cover the whole width of the roadway with stone to the depth of some five inches before any part had been rolled in, nevertheless the servant of the plaintiff had elected to run the risk to his horse arising from taking him with the load he had across the loose metal, and there being no evidence that the accident was the direct and natural consequence of the defendant's negligence, they were entitled to judgment.—*TORRANCE v. ILFORD URBAN DISTRICT COUNCIL, C.A.*, 301.

**HOSPITAL**—See Master and Servant.

**HUSBAND AND WIFE**—

1. *Articles bought by wife with money supplied by husband—Paraphernalia.*—Since the Married Women's Property Act, 1882, articles purchased by a wife for her personal use are *prima facie* her own property, and the fact that the husband supplied the money makes no difference. In no circumstances can there be any question of paraphernalia during the husband's lifetime.—*MASSON TEMPLER & Co. v. DEFRIES, C.A.*, 744.

2. *Damages for loss of wife—Sale of goods—Tinned salmon—Breach of implied warranty—Tort—Cause of action independent of tort—Recovery of damages, based on loss of services.*—In an action to recover damages for pecuniary loss sustained by the plaintiff by reason of the death of his wife through eating tinned salmon supplied and sold by the defendants to the plaintiff and his wife, the jury awarded the plaintiff, *inter alia*, £200.

Held, that the rule laid down by Lord Ellenborough, C.J., in *Baker v. Bolton* (1 Camp. 493), that "In a civil court the death of a human being could not be complained of as an injury; and the damages as to the plaintiff's wife must stop with the period of her existence," was limited to actions based on the tort, which was the wrong that caused the death; but that where there was also another

and independent cause of action, the loss of services caused by the death of the wife was an element which might be included in the damages awarded to the husband.—*JACKSON v. WATSON & SONS, C.A.*, 447; 1909, 2 K. B. 193.

3. *Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), ss. 9 and 11—*Order for maintenance—Arrears—Bastardy Laws Amendment Act, 1872* (35 & 36 Vict. c. 65), s. 4—*Enforcement of payment—Appeal.*—An appeal does not lie to the Divorce Divisional Court from a magistrate's "order" enforcing payment of arrears under a maintenance order.—*GRIFFITHS v. GRIFFITHS, P.D.*, 504.

4. *Wife surety for husband—Undue influence—Presumption—Capacity to contract—Law of Transvaal—Lex situs.*—The relation of husband and wife does not raise a presumption of undue influence; and a mortgage by a wife to secure a husband's debts is not void merely because she had no independent advice.

The *lex situs* governs the capacity to contract; and, therefore, a wife in England cannot secure her husband's debt to an English bank by a mortgage of land in the Transvaal.—*BANK OF AFRICA v. COHEN, Eve, J.*, 268.

5. *Wife's tort—Liability of husband—Judicial separation—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 26.—Section 26 of the Matrimonial Causes Act, 1857, relieves a husband from liability for a tort committed by his wife during coverture, when a decree for judicial separation has been pronounced before the trial of the action for tort, though after the issue of the writ.—*CUENOD & Co. v. LESLIE, C.A.*, 340; 1909, 1 K. B. 880.

See also Bankruptcy, Insurance, Justices.

**INFANT**—

*Contract—Misrepresentation as to age—Promissory note—Infants Relief Act, 1874* (37 & 38 Vict. c. 62), s. 1.—An infant who borrows money on the security of a promissory note is not made liable at law on the note by the fact that the lender has been induced to enter into the transaction by a false representation that the infant is of full age.—*LEVENE v. BROUGHAM, C.A.*, 243.

See also Will.

**INJUNCTION**—See Company, Divorce, Practice.

**INNKEEPER**—

*Liability for traveller's property—Clubroom in inn hired by athletic club—Goods of guests of guests.*—The responsibility of an innkeeper for the safety of the traveller's property begins the moment the relationship of innkeeper and guest arises, and that relationship begins the moment a traveller enters the inn with the intention of using it as an inn, and is received on that basis by the innkeeper. The goods of the traveller then become liable to a lien, although the lien does not attach until a debt has been incurred, and the fact that some person other than the traveller is to pay for the accommodation does not affect the innkeeper's liability for, and lien upon, the traveller's goods.—*WRIGHT v. ANDERTON, K.B.D.*, 135; 1909, 1 K. B., 209.

**INSURANCE**—

1. *Accident—Accident direct or proximate cause of death—Disease or other intervening cause.*—An accident policy provided for the payment of a sum of money to the insured's personal representative if the insured should sustain any bodily injury by accident, if such injury should within three months of the accident directly cause the death of the insured, but specially provided that the company were not to be liable where the direct or proximate cause of death was disease or other intervening cause, even although the disease or other intervening cause might itself have been aggravated by such accident or have been due to weakness or exhaustion consequent thereon, or the death should have been accelerated thereby.

The insured, while hunting, was thrown and got wet. In consequence he suffered a severe shock to the nervous system, whereby the general vitality of his body was impaired. He rode home, and within forty-eight hours developed pneumonia, from which a few days afterwards he died.

Held, affirming the decision of Channell, J. (24 T. L. R. 784), that death was caused by an accident within the meaning of the policy, and that the company, therefore, was liable.—*ETHERINGTON AND LANCASHIRE AND YORKSHIRE ACCIDENT INSURANCE CO., Re, C.A.*, 266; 1909, 1 K. B. 591.

2. *Life—Bankruptcy of assured—Subsequent payment of premiums—Death of assured—Claim to policy moneys.*—A man effected a policy upon his own life, and subsequently became bankrupt, but shortly afterwards received his discharge. He continued to pay the premiums on the policy up to the time of his death, when his legal personal representatives claimed the policy moneys as against the trustee in bankruptcy.



Held, that the claim of the trustee must prevail, and that the debtor's representative were not entitled to any part of the policy moneys.

*Re Tyler* (1907, 1 K. B. 855) distinguished.—*TAPSTER v. WARD, Exr., J.*, 503.

3. *Life—Conditions of policy—Claim to be made within twelve months of the registration of the holder's name—Liability of company.*—A coupon insurance policy against accident was issued by the appellant company, which provided that a claim by the assured must be made within twelve months of the registration of the holder's name. H. filled up the coupon, and sent it, together with the requisite premium, to the company for registration on the 25th of December, 1905. On the 4th of January, 1906, he received a letter, dated the previous day, enclosing an official acknowledgment, dated the 29th of December, 1905, of the registration of his name. The company did not keep a regular register of the names, but in practice the applications were stamped, dated, and filed on being received, after which intimation was sent to the holder of the coupon, stating that the coupon had been duly received and registered. On the 28th of December, 1906 H. was injured in a railway accident, and died on the 29th of December, and his widow made a claim to the company on the 2nd of January, 1907.

Held, that the claim was made within twelve months of the registration of the deceased's name, and therefore that the company were liable.—*GENERAL ACCIDENT FIRE AND LIFE INSURANCE CO. v. HUNTER, H.L.*, 649.

4. *Life—Deposit—Amalgamation—Repayment of deposit—Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 61), s. 3.*—A deposit made by an insurance company in conformity with the Life Assurance Companies Act, 1870, s. 3, may be paid out to their assignees after dissolution of the depositing company, in the absence of any claim against that company, notwithstanding there has been no accumulation as in that section provided.—*POPULAR LIFE ASSURANCE CO., Re, Warrington, J.*, 47; 1909, 1 Ch. 80.

5. *Life—Fraud of insurance agent—Avoidance of policy—Scope of agent's authority—Statement wholly outside his authority—Liability of company.*—Money received by an insurance company and paid to their agent by the assured upon a misrepresentation made by the agent, is money obtained by fraud, and can be recovered back from the company. It is no defence to such an action, whether brought for the return of the premiums paid on the faith of the misrepresentation, or *semble* for a claim for damages, to allege that the misrepresentation was in respect of a matter wholly outside the agent's authority, and was therefore not binding on the company.

Appeal from the decision of the Court of Appeal (reported 52 SOLICITORS' JOURNAL, 158; 1908, 1 K. B. 545; 24 T. L. R. 216) dismissed.—*KETTLEWELL v. REFUGE ASSURANCE CO., H.L.*, 339; 1909, A. C. 243.

6. *Life—Insurable interest—Mutual insurance by married couple—Claim by husband on death of wife—Insurances upon Lives Act, 1774 (14 Geo. 3, c. 48)—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 11.*—An insurance society issued to a husband and wife a policy on their joint lives, the premiums to cease and the sum insured to become payable to the survivor of them upon the death of such one of them as should die first. The wife died first, and the husband claimed the insurance money. The company alleged that the husband had no insurable interest in his wife's life, and pleaded the statute of 1774.

Held, by the Court of Appeal, affirming, although on different grounds, the decision of Pickford, J. (99 L. T. 29, 24 T. L. R. 700), that the husband could recover, as a married woman was entitled by section 11 of the Married Women's Property Act, 1882, to insure her own life and to nominate her husband to take her benefit of the sum insured at her death.—*GRIFFITHS v. FLEMING, C.A.*, 340; 1909, 1 K. B. 805.

7. *Marine—Piracy—Warranted free from capture except piracy—Organized expedition to establish government.*—Goods were shipped by the Bolivian Government for their troops, who were in the district of El Acre, for the purpose of resisting an organized expedition seeking to acquire that district and to establish a government there of their own. The organizers of the expedition fitted out two ships for the purpose of intercepting vessels carrying provisions and stores for the Government troops, and stopped the vessel in the River Acre and seized the goods. The goods were insured under two policies, one of which contained a clause "warranted free of capture, seizure, and detention . . . piracy excepted."

Held, affirming a decision of Pickford, J. (24 T. L. R. 724), that this was not a loss by piracy within the meaning of the exception in the policy, and that the action had rightly been dismissed.—*REPUBLIC OF BOLIVIA v. INDEMNITY MUTUAL MARINE ASSURANCE, C.A.*, 266; 1909, 1 K. B. 785.

8. *Marine—Policy on freight—Constructive total loss—Notice of abandonment—Freight subsequently carried.*—The plaintiffs took out a policy of insurance with the defendants on freight proposed to be carried by their ship on a voyage from Monte Video to New York. The ship left Monte Video on the 1st of November, 1905, but, becoming disabled by reason of heavy weather, she was towed into Charlestown on the 10th of January, 1906. After a survey had been held, notice of abandonment was given to the underwriters on the 20th of January, on the ground that there had been a constructive total loss of freight. They refused to accept the notice, but agreed that the 20th of January should be treated as the date on which a writ was issued. The vessel was subsequently sold, and after being repaired, was towed into New York, where the freight was collected by the purchasers.

Held, that as there was a constructive total loss of freight at the date which was agreed as date of writ, the plaintiffs were entitled to recover the amount of the insurance, although the freight was in fact subsequently earned.—*BARQUE ROBERT S. BESNARD CO. v. MURTON, K.B.D.*, 717.

#### JUDGMENT:—

*Foreign judgment—French court—Persons domiciled in England—Final judgment—Natural justice.*—The plaintiff and defendants entered into an agreement whereby the latter obtained the exclusive right to sell the plaintiff's products in Great Britain and her colonies for a certain period. The agreement also provided for the payment of an indemnity in the event of a breach of contract on the part of the defendants, and that the French Tribunals of Commerce were alone to have jurisdiction. The plaintiff issued a writ, which was served in accordance with the French Code of Civil Procedure by leaving it at the office of the Procureur-Général. The writ was also sent to the French Consulate in London, and notice was given to the defendants. The plaintiff obtained judgment against the defendants before the Tribunal de Commerce de Lyon, service of which was effected by leaving it at the office of the Procureur-Général, and notice was given to the defendants through the French Consulate in London. The defendants ignored the notice of both writ and judgment. Subsequently notice of the execution of the judgment and certificate of *nulla bond* were sent to the defendants. In an action on the French judgment it was

Held, that the defendants were liable for the amount of the judgment as there was nothing in the proceedings before the French tribunal that was contrary to natural justice, although the defendants were informed of the commencement of the proceedings at a time that it was practically impossible for them to appear on the day named; also, that in France there was in existence a final judgment binding on the defendants at the time when the English action was brought.—*JEANNOT v. FUERST, K.B.D.*, 449.

#### JUSTICES:—

1. *Appeal from justices—Magistrates' notes of evidence—Short-hand notes—Verification and cost—Summary Jurisdiction (Married Women) Act, 1895.*—Under the Summary Jurisdiction (Married Women) Act of 1895, it is the duty of the magistrates' clerk to take a note of the evidence and of the reasons for the justices' decision. If a shorthand note is taken it is to be supplied free of cost and should be verified. Unless the shorthand note is provided free of cost the parties are entitled to an ordinary note.—*ROYLE v. ROYLE, P.D.*, 119; 1909, P. 24.

2. *Right to trial by jury—Certiorari to quash conviction—Omission by justices to give statutory warning.*—Where a person is charged before the magistrates at petty sessions with an offence in respect of which, on summary conviction, he may be imprisoned for a term exceeding three months, such person is entitled to claim to be tried by a jury. Justices are not bound, before the charge is gone into, to warn the accused as to his right to elect, unless it appear upon the face of the information that the offence charged is punishable with more than three months' imprisonment, but when, during the hearing of the case, evidence is given which makes the charge become such an offence, it at once becomes the duty of the justices to give the statutory warning.—*R. v. BEESBY, C.C.A.*, 289; 1909, 1 K. B. 849.

#### LANDLORD AND TENANT:—

1. *Covenant by landlord to pay rates—Water rate—Domestic and trade purposes.*—A covenant by a landlord to pay all rates and taxes, except gas and electric light, will include the water rate for water supplied for domestic purposes, but not the rate for water supplied for trade purposes.—*DRIESSELMAN v. WINSTANLEY, Exr., J.*, 631.

2. *Covenants running with the land—Covenant by lessor to perform covenants of head lease—Collateral covenant—Enlargement of covenant for quiet enjoyment.*—A lease for a term of years of certain land contained a covenant by the lessee to keep in repair all buildings

erected on the land and a proviso for re-entry for breach of that covenant. Two hundred and eleven houses were erected on the land. An under-lease was granted of two of the houses and the under-lessor covenanted to repair the premises not demised by the under-lease. The defendant committed a breach of his covenant to repair, whereupon the successors in title of the head landlord obtained judgment against him for possession, and re-entered on the whole of the premises the subject-matter of the head lease, and ejected the plaintiff, who claimed damages from the defendant for breach of the covenant contained in the under-lease. Jelf, J., held that the latter covenant, being a covenant to perform something not on the land demised, was only a collateral covenant, and did not run with the land, and dismissed the action as not being maintainable. The Court of Appeal having affirmed that decision, the plaintiff appealed.

Their lordships dismissed the appeal, holding that the covenant to perform the covenants in the superior lease relating to the premises not demised by the under-lease, being a covenant not to be performed on the demised premises, was only a collateral covenant, and, therefore, not binding on the assigns of the under-lessor though named.

*Doughty v. Bowman* (11 Q. B. 444) discussed.

*Sampson v. Easterby* (9 B. & C. 505, 6 Bing. 644) distinguished.—*DEWAR v. GOODMAN, H.L.*, 116; 1909, A. C. 72.

See also Lease.

#### LANDS CLAUSES ACTS:—

*Payment out—Person absolutely entitled—Adverse possession—Right to value of reversion after expiration of term.*—A person shewing title by adverse possession for twelve years after the expiration of a long term of years to land taken under the Lands Clauses Act, will, in the absence of any valid claim by the reversioner, be deemed to be the owner of the land and entitled to payment out of the purchase-money under section 79.

*Ex parte Chamberlain* (14 Ch. D. 323) followed.—*HARRIS, RE, EX PARTE LONDON COUNTY COUNCIL, Eve, J.*, 716.

#### LEASE:—

*Conditional surrender—Corporate land of municipal corporation—Lease for lives—Consent of Local Government Board not obtained—Lease granted in consideration of surrender of existing lease—Estoppel—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 108—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 72.*—In 1892 a municipal corporation, in order to compromise an action between themselves and the holder of a lease of corporate land from them for the residue of a long term that would expire in 1899, accepted the surrender of the long lease and granted a new lease rent free for the lessee's life. The sanction of the Local Government Board was, however, not obtained to the lease of 1892, and that lease was consequently bad. The lessee remained in possession for more than twelve years after the grant of the lease of 1892, and set up a title to the freehold under the Real Property Limitation Acts on the footing that the lease of 1892 was bad.

Held, that whether the lease of 1892 was void or voidable (as to which the court expressed no opinion), there was only a conditional surrender of the former lease of 1892, and as the lease of that date was bad the surrender was inoperative. Consequently the title of the corporation to possession did not accrue till 1899, and the lessee's claim to prescriptive title failed.

Decision of Channell and Sutton, JJ. (reported 99 L. T. 612, 72 J. P. 465), affirmed.—*CANTERBURY CORPORATION v. COOPER, C.A.*, 301.

See also Licensing Law, Mines.

#### LIBEL:—

1. *Action of libel against public officials—Winding-up of company—Reports made by defendants referring to the liquidation of companies promoted by the plaintiff—Absolute privilege pleaded—Order staying action—Companies (Winding-up) Act, 1880, Schedule 1 (3) and s. 29.*—The plaintiff commenced an action to recover damages for alleged libel contained in official reports made in the winding-up of certain companies which had been promoted by the plaintiff.

Held, that the action could not be maintained against the defendants, as the official reports were privileged documents, and therefore the action had on that ground rightly been stayed.

*Bottomley v. Brougham* (52 SOLICITORS' JOURNAL 225; 1908, 1 K. B. 584) followed.—*BURR v. SMITH, C.A.*, 502.

2. *Copy of a public document—Privilege.*—The defendants published in their newspaper a copy of certain notices of receiverships registered at Somerset House under the Companies Act of 1907. One of these notices was as follows: "John Jones & Sons (Limited) (Engineers, Loughborough)." The words in brackets did not appear in the register, but were added by the defendants in place of the number under which the papers were filed, as there

were more than one company registered as John Jones & Sons (Limited). It turned out that, by a mistake, the plaintiffs' number had been applied to this notice, which in fact referred to another firm than the plaintiffs. The plaintiffs were solvent, and no receiving order had been made against them, and they claimed damages for libel. Held by Darling, J., that as the defendants had not copied the register *simpliciter* they had no defence to the action, and he directed the jury that the only question for them was that of damages. The defendants appealed.

Held, not merely that there had been misdirection, but that the defendants were entitled to judgment either on the ground of privilege or justification. The Legislature thought it well in the public interest that an open record should be kept of receivership orders. Newspapers that published such registrations were simply assisting the Legislature to carry out that object, and copies of such notices were privileged.

*Scarles v. Scarlett* (1892, 2 Q. B. 56) considered and approved.—*JOHN JONES & SONS v. FINANCIAL TIMES, C.A.*, 614.

3. *Practice—Particulars containing imputations on plaintiff not contained in alleged libel—Fair comment—Order of judge in chambers restricting particulars and ordering further particulars.*—The defendants in a libel action pleaded in paragraph 9 of their defence that "in so far as the said words consist of statements of fact the same in their natural and ordinary signification were true in substance and in fact; in so far as the said words consisted of comment, it was fair comment upon a matter of public interest, namely, the facts." Particulars were given to shew that the matter complained of was a matter of public interest, and circumstances were stated outside the statements made in the article complained of to shew that the comment upon "the said facts" was fair comment. The plaintiff contended that the particulars embarrassed him in his action, and Channell, J., made the following order: "The defendants to amend the particulars under paragraph 9 of the defence by distinguishing and stating separately in the particulars the statement of facts made in their alleged libel which they justified as true in substance and in fact, and which they relied on as being matter on which they were entitled to comment, and by striking out any allegations of fact which do not come under one of those heads." The defendants appealed.

The court allowed the appeal.

*Digby v. Financial News (Limited)* (1907, 1 Q. B. 502, 23 T. L. R. 117) considered and approved.—*LYONS v. FINANCIAL NEWS, C.A.*, 671.

4. *Two actions for two publications of same libel—Admission by defendant in first action that libel defamatory and untrue—Pleading in second action of fair comment and of privilege—Estoppel—Extract from Blue Book by newspaper.*—If, in an action for libel, a defendant has admitted that certain charges which he made against the plaintiff were both defamatory and untrue, when sued subsequently for another publication of them he is not precluded from raising by his pleading the defences of fair comment and of privilege.

A newspaper publishing an extract from a Blue Book which is defamatory is protected on the ground of privilege if they plead section 3 of the Parliamentary Papers Act, 1840, and prove that the publication of the extract was made *bona fide* and without malice. Section 3 of that Act applies to such a case.

*Houghton v. Plimsoll* (Times, 2nd April, 1874) followed.

Comment by one person upon statements made in a privileged document by another which are defamatory and untrue is fair provided that the comment would be fair if the statements made were true.

*Ris v. Perry* (64 L. J. Q. B. 566) commented upon.

A letter, together with an extract from a Blue Book, was published in a newspaper. Statements in the extract as to the career of Mr. M. were capable of being construed as defamatory. In the letter the writer said of Mr. M., his "interesting career is detailed in the enclosed abstract, for which I trust you will find room in your columns."

Held, that it was open to a jury to find that these words in the letter were words of comment and not of statement.

The publication of a matter of a public nature and of public interest and for public information is privileged, provided it is published with the honest desire to afford the public information and with no sinister motive.—*MANGENA v. WRIGHT, K.B.D.*, 485.

#### LICENSING LAW:—

1. *Ante-1869 beerhouse—Licence refused with compensation—Effect on lease.*—During the continuance of the lease of an ante 1869 beerhouse "and premises, with the bakehouse in the rear," by which the landlord covenanted for quiet enjoyment, and the tenant covenanted not to use the premises otherwise than a beerhouse except with the consent of the landlord, the renewal of the licence of the house was refused by the compensation authority, subject to compensation. Both landlord and tenant received compensa-



tion. In an action for rent accruing due subsequent to the extinction of the licence the tenant contended that the lease had determined on the extinction of the licence as on a total failure of consideration.

Held, that the lease had not so determined.—GRIMSDICK v. SWEETMAN, K.B.D., 717.

2. *Licensing—Compensation charge—Deduction from rent—“Unexpired term”—Reversionary lease—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 3 (3) and Schedule II.*—The “unexpired term” mentioned in Schedule II. to the Licensing Act, 1904, according to the length of which is calculated the deduction that may be made from rent in respect of the compensation charge, means the period of time during which a person has the power to occupy the premises by himself or his tenants, and so to enjoy the benefits of the licence. This “unexpired term,” therefore, will include, besides the term of an existing tenancy, the terms of a reversionary lease to commence on the day next but one after the expiration of the existing tenancy.—LLANGATTOCK v. WATNEY, COMBE, REID, & Co., K.B.D., 699.

3. *Compensation charge—Division of compensation money—Jurisdiction of High Court to review the award.*—A judge of the High Court has no jurisdiction to review an order of quarter sessions awarding compensation for non-renewal of a licence under the Licensing Act, 1904, and it is not, therefore, competent for any of the parties interested to maintain an action to bring about a revision of the compensation fund.

The basis of valuation considered.—BENT'S BREWERY Co. v. DYKES, Eve, J., 302.

4. *Compensation charge—Incidence of—Deductions from rent according to “unexpired term”—When date commences—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 3 (3), and Schedule II.*—The “unexpired term” mentioned in Schedule II. to the Licensing Act, 1904, by the length of which is determined the percentage of the compensation charge which lessees of licensed premises with an existing on-licence may deduct from their rent, is calculated as from the 10th of October, when the compensation charge is payable by the licensed holder.—LONDON COUNTY COUNCIL v. WATNEY & Co., K.B.D., 303; 1909, 1 K. B. 637.

5. *Permitting drunkenness on licensed premises—During period after closing hours—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 13.*—A licensed person may be convicted of permitting drunkenness on licensed premises under section 13 of the Licensing Act, even though the offence is committed during closing hours and the drunken persons are the private guests of the wife of the licensed person.—LAWSON v. EDMINSON, K.B.D., 15.  
See also Company, Revenue.

#### LIMITATIONS, STATUTE OF:—

*Acknowledgment of debt—Request for time to pay.*—A request for time to pay a debt is not a refusal to pay which excludes the promise to pay to be inferred from an express acknowledgment of the debt, so that in such a case the debt is not barred by the Statute of Limitations.—COOPER v. KENDALL, C.A., 243; 1909, 1 K. B. 405.

See also Highway, Mines.

#### LOCAL GOVERNMENT:—

1. *Bye-laws—Buildings—New building—Conversion of railway carriage into dwelling-house—Demolition of whole structure by local authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 159.*—The effect of the provision in section 159 of the Public Health Act, 1875, that for the purposes of the Act the conversion into a dwelling-house of a building not originally constructed for human habitation shall be considered the erection of a new building, is that the provisions of the Act, and of bye-laws made under the Act, as to new buildings become applicable to the converted building as if it were an entirely new building.

Hence an old railway carriage which the plaintiff acquired when he purchased a plot of land and converted into a dwelling-house became thereby a new building within the meaning of the above section, and as it did not comply with bye-law 10, the defendants were, under bye-law 102, after having given the proper notices, entitled to pull down the whole structure.

Decision of Divisional Court (53 SOLICITORS' JOURNAL, 163; 1909, 1 K. B. 263) affirmed.—HANRAHAN v. LEIGH-ON-SEA URBAN DISTRICT COUNCIL, C.A., 502.

2. *Inquiry held by county council on application of district council—Expenses—Commissioner's fees—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 72 (4).*—A county council, upon the application of an urban district council, held a local inquiry under section 57 of the Local Government Act, 1888, as to the proposed union of the district with an adjoining district, and appointed a barrister as commissioner to hold the inquiry.

Held, that the charges for the commissioner's remuneration, under section 72 (4) of the Local Government Act, 1894, were payable by the county council; the liability of the urban district council being limited to the payment of out-of-pocket expenses, such as printing, bill-posting, and advertising.—MIDDLESEX COUNTY COUNCIL v. KINGSBURY DISTRICT COUNCIL, C.A., 227; 1909, 1 K. B. 554.

3. *Notice to treat—Withdrawal—Fresh notice—Revival of first notice—Notice to acquire reversion without leasehold interest—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxix.), ss. 80, 82.*—Where owners of property are served with notice to treat under Michael Angelo Taylor's Act, for the purchase of land for widening a street, and they repudiate such notice, the local authority may withdraw the notice and are not liable in damages for so doing.

Quære, whether a local authority, proceeding under the Act, can acquire reversionary interests without also acquiring the leasehold interests in the land required.

Quære, also, whether the withdrawal of a notice to treat operates to revive a previous notice.—WILD v. WOOLWICH BOROUGH COUNCIL, Eve, J., 561.

4. *Sewer—Facilities for carrying off liquids from factories—Insufficiency of sewage disposal works for treatment of sewage—Public Health Act, 1875, s. 21—Rivers Pollution Prevention Act, 1876, s. 7.*—By section 7 of the Rivers Pollution Prevention Act, 1876, “every sanitary authority or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry liquids proceeding from their factories or manufacturing processes into such sewers . . . provided also that no sanitary authority shall be required to give such facilities where ‘the sewers’ of the authority are only sufficient for the requirements of their district.”

Held, dismissing the appeal of the company, that the words “the sewers of such authority,” in the section cited above, meant the whole sewage system, and not merely the sewage-pipes, and accordingly as the respondent's sewage system was not sufficient to deal with the liquids from the appellants' factory as well as the sewage, the factory owners were not entitled to an order requiring the respondents to give facilities for the carrying of the liquid refuse from the appellants' manufactory into the respondents' sewers.

Decision of Court of Appeal (1908, 2 K. B. 780) affirmed.—JONAS BROOKS & Bros. v. MELTHAM URBAN COUNCIL, H.L., 541.

See also Lease.

LOCOMOTIVE.—See Highway.

LONDON:—

1. *Building—General building line—Certificate of superintending architect—Appeal to tribunal of appeal—Powers of tribunal—Previous certificate in existence not appealed against—Res judicata—London Building Act, 1894 (57 & 58 Vict. c. cxxix.), ss. 22, 24, 25, 182.*—Where a certificate, which has not been appealed against, has been given by the superintending architect of metropolitan buildings, the general line of building in a street so defined is (in the absence of evidence of buildings having been since erected that had altered or might alter the line of buildings) *res judicata*, and the tribunal of appeal has no power to define a line differing from it.—LILLEY & SKINNER v. LONDON COUNTY COUNCIL, H.L., 429.

2. *Streets—Building line—Shops erected on forecourts—Alteration of building line—Consent of Metropolitan Board of Works before 1894—Metropolis Management Amendment Act, 1862, s. 75—London Building Act, 1894, ss. 22, 27, 216.*—In determining the general line of buildings in a part of the Euston Road the tribunal of appeal under the London Building Act, 1894, had regard to the existence of a number of buildings, for the most part one storey high, which had from time to time been built on the forecourts of the main buildings. The erection of buildings on the forecourts, except on old foundations, was, before 1862, prohibited by section 140 of an Act of 1826 (7 Geo. 4, c. cxlii.). Subsequently, though section 140 of the Act of 1826 was repealed, the erection of buildings in the street beyond the general line of buildings was unlawful, except with the consent of the Metropolitan Board of Works or their successors, the London County Council, under section 75 of the Metropolis Management Amendment Act, 1894. Some of the buildings on the forecourts were erected with consent, as to one of the others there was evidence that the consent of the board had been refused, and as to the rest there was no evidence that consent had been applied for.

Held (Fletcher Moulton and Farwell, L.J.J., Bigham, P., dissenting), reversing the decision of the Divisional Court, that the tribunal of appeal were wrong in law in having regard to the existence of the buildings on the forecourts, and that the line of buildings was the main front of the original buildings, as defined in the certificate of the superintending architect.—FLEMING v. LONDON COUNTY COUNCIL, C.A., 558.

See also Burial, Local Government, Market, Rating.

## MARKET:—

*Market in streets—Market without metes and bounds—New highways—Statutory dedication—*2 Geo. 3, c. 15—3 & 4 Vict. c. 70, s. 20—*Whitechapel Improvement Act, 1853, s. 46—Whitechapel and Holborn Improvement Act, 1865, s. 16.*—Held, that the right to hold the market extended to holding it in the streets, and that the dedication of them as highways must be taken to be subject to the user of them for the purposes of the market.

Decision of the Court of Appeal (reported 1908, 1 K. B. 115) affirmed.—GINGELL, SON, & FOSKETT v. STEPNEY BOROUGH COUNCIL, *H.L.*, 356; 1909, A. C. 245.

## MARRIAGE:—

*Proof of marriage in the Isle of Man—Practice.*—Where a marriage had taken place by an English bishop's special licence in the Isle of Man, the court, without requiring expert evidence, expressed itself satisfied as to the validity of the marriage on production of the licence and the evidence of the petitioner.—ROHMANN v. ROHMANN, *P.D.*, 64.

## MARRIED WOMAN:—

1. *Action for tort against husband—False imprisonment—Malicious prosecution—Action for protection and security of separate property—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12.*—An action for false imprisonment and malicious prosecution brought by a wife against her husband is not an action "for the protection and security of her separate property" within the Married Women's Property Act, 1882, though at the time of the prosecution the wife was in service and lost her situation in consequence of the husband's proceedings.—TINKLEY v. TINKLEY, *C.A.*, 242.

2. *Desertion—Marriage induced by wife's statement—Reasonable cause—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).*—Where a husband had deserted his wife on account of a statement made before marriage as to the paternity of a child born in wedlock, it was

Held, that this was not a reasonable cause or excuse.—HOLT v. HOLT, *P.D.*, 84.

3. *Will—Exercise of general power of appointment—Separate estate—"Debts or other liabilities"—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (3) (4); s. 4.*—Property appointed by a married woman by her will, before 1893, under a general power of appointment, is not thereby made liable on her death for her "debts and other liabilities" if at the time when she contracted them she had no separate estate.—FIELDWICK, RE, JOHNSON v. ADAMSON, *C.A.*, 47; 1909, 1 Ch. 1.

See also Bankruptcy, Husband and Wife.

## MASTER AND SERVANT:—

1. *Common employment—Workman travelling by train from work—Train belonging to employers—Accident to workman returning home after his day's work.*—A master's exemption from liability given by the doctrine of common employment is not restricted to accidents caused by the negligence of a fellow workman working on the same work as that on which the injured man was engaged at the time of the accident, but covers the case of a collier, who, having ceased his day's work in the pit, was killed on his way home by the negligence of a mason in the same employer's service, who was repairing a bridge on the colliery premises under which a train provided by the master to take the men to and from the village and the colliery was passing.

Decision of Bray, J. (24 Times L. R. 646) affirmed.—COLDRIK v. PARTRIDGE & Co., *C.A.*, 214; 1909, 1 K. B. 530.

2. *Employer's liability—Seaman—"Rigger" at dock—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 2—Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 13—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 8—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 742.*—The word "seaman" in the Employers' Liability Act, 1880, is not defined by the Merchant Shipping Act, 1854, but bears its ordinary signification, and does not include a man who is casually employed in warping a vessel from one side of a dock to another.—CHISLETT v. MACBETH & Co., *C.A.*, 715.

3. *Hospital—Patient—Injury to patient through negligence in operation—Liability of governors.*—The governing body of a hospital do not undertake to perform operations themselves, but to supply a medical staff consisting of persons in whose selection they have taken due care. Though some members of this medical staff, such as nurses and carriers, are for some purposes the servants of the corporation, yet during the operation they take their orders from the surgeons and cannot be considered servants of the corporation. The corporation therefore is under no liability to a patient in respect of injuries incurred by reason of the negligent performance of an operation.—HILLYER v. ST. BARTHOLOMEW'S HOSPITAL, *C.A.*, 714.

4. *Statutory obligations—Common employment—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), ss. 49, 50—Coal Mines Regulation Act, 1896 (59 & 60 Vict. c. 42).*—Statutory defences to proceedings of a criminal nature in respect of offences under the Coal Mines Regulation Acts are only defences in such proceedings, and are not statutory defences in civil proceedings based on the non-performance of statutory duties. Consequently, if a breach of statutory duties is alleged, it is no defence to the owners in civil proceedings that they have done the best in their power to ensure compliance with the statutory regulations, and that the negligence which has caused damage to one of their servants is the negligence of a fellow servant.—DAVID v. BRITANNIC MERTHYR COAL CO., *C.A.*, 398; 1909, 2 K. B. 146.

5. *Workmen's compensation—Application for award—Poor law relief—Partial dependency—Annuity as basis of calculation.*—When an applicant for an award under the Workmen's Compensation Act, 1906, was in the receipt of Poor Law relief,

Held, that such source of means must be taken into account when fixing the amount of compensation.

Further, the adoption of the cost of an annuity as a basis for the calculation of the compensation was erroneous.—BYLES v. POOL, County Court, 215.

6. *Workmen's compensation—Average weekly earnings—Irrregular employment—Basis of computation—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), Schedule 1, ss. 1, 2.*—Held, dismissing an appeal by the workman, that in estimating the average weekly earnings under section 2 (a) of Schedule 1 of the Workmen's Compensation Act, 1906, the intention of the Legislature was to give an injured workman compensation on the basis of what he would have earned in a normal week but for the accident, having regard to the nature of the man's employment. If, therefore, the employment was one subject to recognized interruptions, the average weekly earnings must be calculated first by dividing the total sum earned by the number of weeks actually worked, disregarding days on which no work was done and then further dividing the result by the fraction of the whole year of fifty-two weeks, which represented the normal period of employment.—ANSLOW v. CANNOCK CHASE COLLIERY CO., *H.L.*, 519; 1909, 1 K. B. 352.

7. *Workmen's compensation—Course of employment—Accident not arising out of employment—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1.*—A claimant for compensation under the Workmen's Compensation Act, 1906, must establish that the accident either arose out of something that he was doing in the course of his work, or that his work placed him in a position of peculiar danger. It is not enough for him to say that he would not have met with the accident if he had not been at work.—CRASKE v. WIGAN, *C.A.*, 560.

8. *Workmen's compensation—Course of employment—Engine driver leaving engine—Workmen's Compensation Act, 1897, s. 1.*—An engine driver left his engine, which was at a standstill in a station, to speak to a friend. On returning to his engine he was knocked down by a waggon which was being shunted and was killed.

Held, that the accident which killed him was not "one arising out of and in the course of his employment," and therefore his widow had no claim to compensation.—REED v. GREAT WESTERN RAILWAY, *H.L.*, 31; 1909, A. C. 31.

9. *Workmen's compensation—Course of employment—Taking meal in dangerous place—Needlessly exposing himself.*—An accident to a workman which is caused by his needlessly taking a risk that cannot be fairly said to arise out of his employment is not an accident arising out of his employment so as to entitle him to compensation under the Workmen's Compensation Act, 1906.—BRICE v. EDWARD LLOYD, *C.A.*, 744.

10. *Workmen's compensation—Dependent—Children contributing to support of mother—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), First Schedule.*—A widow is wholly dependent upon her husband's earnings notwithstanding that the husband's earnings have been largely increased by contributions from grown-up children who lived with the father and mother.—HODGSON v. WEST STANLEY COLLIERY, *C.A.*, 732.

11. *Workmen's compensation—Dependent—Death of dependant before claim made—Claim by dependant's executrix—Admissibility of claim—Workmen's Compensation Act, 1906, Schedule 1.*—A workman in the employ of the defendant colliery company died from injury received in the course of his employment on the 14th of July, 1907. His mother, who averred to having been dependent upon him, died on the 16th of October, 1907, without making any claim upon the company. Her executrix made a claim on the 10th of December, 1907, under the Workmen's Compensation Act, 1906. The Court of Session decided by a majority in favour of the claim being maintainable.

Held (Lord Dunedin dissenting), that as the right of a dependant to compensation rested not on the giving notice of the claim, but



on the death of the workman, there was existing a vested right in the dependant or dependants to a sum of money defined by statute to be paid by the employer, the right to claim which passed to the legal representatives on his death, notwithstanding that the dependant had died without having made the claim.

*Darlington v. Roscoe & Sons* (1907, 1 K. B. 219) approved; *O'Donovan v. Cameron, Swan, & Co.* (1901, 2 I. R. 633) not approved.—*UNITED COLLIERIES v. SIMPSON, H.L.*, 630.

12. *Workmen's compensation—Dependent—Posthumous illegitimate child—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 13; *First Schedule*, s. 1.—Held, affirming the decision of the Court of Appeal, that a posthumous illegitimate child was a "dependant" wholly dependent upon a workman's earnings within the Workmen's Compensation Act, 1906.—*SCHOFIELD v. ORRELL COLLIERY, H.L.*, 518; 1909, A. C. 115.

13. *Workmen's compensation—Heart disease—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1 (1).—A workman, who was suffering from aneurism of the aorta, in the reasonable and ordinary discharge of his duties, sustained a strain, which caused his death through rupture of the aorta, though the rupture was not caused by an excessive strain, but by the man's condition of body not being able to sustain ordinary exertion.

Held, that this was a case of death by accident within the meaning of the Workmen's Compensation Act, 1906.—*HUGHES v. CLOVER, CLAYTON, & Co., C.A.*

14. *Workmen's compensation—Industrial disease—Seaman—Disease contracted on board ship—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), ss. 7 and 8.—The Workmen's Compensation Act, 1906, does not apply to the case of a seaman who contracts an industrial disease while serving on board his ship.—*CURTIS v. BLACK & Co., C.A.*, 576; 1909, 2 K. B. 529.

15. *Workmen's compensation—Operation—Novus actus interveniens—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1.—A workman met with an accident in the course of his employment and an operation was successfully performed. Subsequently it became necessary to perform the operation of grafting skin in order that the workman might get the full benefit of the first operation. The workman died under anaesthetics on the occasion of the second operation.

Held, that the test was whether the step taken to obviate the consequences of the accident was a reasonable one, and that, the evidence being that it was, the workman's representatives were entitled to compensation.—*SHIRT v. CALICO PRINTERS' ASSOCIATION, C.A.*, 430; 1909, 2 K. B. 51.

16. *Workmen's compensation—Operation—Refusal to undergo operation—Reasonableness of refusal—Right to further compensation—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1.—In considering whether the continued disability of a workman arises from his refusal to undergo an operation, the test is whether the refusal was unreasonable, not whether, on the balance of the medical testimony, the operation was reasonably safe. Consequently, where a workman declined to undergo an operation on the advice of his doctor,

Held, that the refusal was not unreasonable, and that the workman was entitled to compensation during the whole period of his total or partial incapacity.—*TUTTON v. OWNERS OF SS. "MAJESTIC," C.A.*, 447; 1909, 2 K. B. 54.

17. *Workmen's compensation—Operation—Refusal to undergo simple operation—Continued incapacity to work—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1.—A workman who meets with an accident in the course of his employment is not entitled to claim compensation for continued incapacity to work if such continued incapacity really arises from his own refusal to undergo a slight operation. The test in each case is the reasonableness or unreasonableness of the refusal to undergo the operation.

*Rothwell v. Davies* (19 Times L. R. 423) explained.—*WARNCKEN v. RICHARD MORELAND & SON, C.A.*, 134; 1909, 1 K. B. 184.

18. *Workmen's compensation—Principal and sub-contractor—No remedy against sub-contractor—Rights against principal—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 4.—Section 4 of the Workmen's Compensation Act, 1906, does not confer any rights against the principal upon a workman who has none against his immediate employer.—*MARKS v. CAENE, C.A.*, 561.

19. *Workmen's compensation—Redemption of a weekly payment by a lump sum—Agreement obtained by other improper means—Workmen's Compensation Act, 1906, Schedule 2, par. 3, sub-section E.*—The redemption of a weekly payment is not limited to the redemption of a weekly payment by award or agreement. The words "other improper means" are not confined to means *ejusdem generis* with fraud and undue influence.—*KING & SONS v. DAVIS, County Court*, 247.

20. *Workmen's compensation—Seaman—Payments during incapacity—Discretion of county court judge—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 7 (a) (e), *Schedule 1* (3).—In determining the amount of compensation payable to a seaman who has met with an accident on board ship, a county court judge ought to have regard to payment of wages made by the employer subsequently to the accident, but before the expiration of the period during which the owner is under statutory obligation to defray the expenses of maintenance of the injured man.—*MCDERMOTT v. OWNERS OF SS. "TINTORETTO," C.A.*, 650.

21. *Workmen's compensation—Seaman—Unexplained drowning—Accident arising out of and in the course of employment—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1.—The unexplained drowning of a seaman does not give rise to a *prima facie* case for compensation under the Workmen's Compensation Act, 1906, the onus being on the applicants to prove that the accident arose out of the employment, and it not being sufficient to shew merely that it happened in the course of the employment.—*MARSHALL v. OWNERS OF SS. "WILD ROSE," C.A.*, 448; 1909, 2 K. B. 46.

See also Corporation, Criminal Law.

#### MAYOR'S COURT:—

*Notice of appeal—Exclusion of Sunday in computation of time—Mayor's Court of London Procedure Act, 1857*, s. 8.—Sunday is to be excluded in computing the two days within which notice of appeal must be served on the other party to an appeal under section 8 of the Mayor's Court of London Procedure Act, 1857.—*MILCH v. FRANKAU & Co., K.B.D.*, 577; 1909, 2 K. B. 100.

#### MINES:—

1. *Coal—Wrongful working—Statute of Limitations—Constructive possession.*—Where a mine-owner wrongfully works coal for more than twelve years before action brought he acquires no title under the Statute of Limitations to the coal except to such as he has actually worked; and constructive possession of a wider area will only be inferred where the inference is necessary to give effect to contractual obligations or to preserve the good faith and honesty of a bargain.—*GLYN v. HOWELL, Eve, J.*, 269; 1909, 1 Ch. 666.

2. *Support—Lease—Construction—Colliery—Lease of upper seam—Reservation of right to work lower seam—Necessary implication.*—If at the date of a lease of an upper seam of coal it is common knowledge that it is impossible to work a lower seam without letting down the upper seam, and the lease contains an express reservation to the lessor of the right to work lower seams, there is a necessary implication that the known and authorized results of the working of the lower seams cannot be complained of by the lessees of the upper seam except so far as they may be entitled to compensation from their lessors under covenants in their leases.

*Butterknowle Colliery Co. v. Bishop Auckland, &c., Co.* (1906, A. C. 305), distinguished.—*BUTTERLEY CO. v. NEW HUCKNALL COLLIERY, C.A.*, 45; 1909, 1 Ch. 37.

See also Master and Servant.

#### MISTAKE:—

*Forgetfulness—Gift to child forgetting previous gift—Rectification or rescission.*—The jurisdiction to grant relief on the ground of mistake extends to cases of mere forgetfulness, and the relief is not confined to rectification but extends to rescission.—*LADY HOOD OF AVALON v. MACKINNON, Eve, J.*, 269; 1909, 1 Ch. 476.

#### MONEY-LENDER:—

*Carrying on business at registered address—Isolated transaction at private residence—Bill of sale—Action for trespass—Interlocutory order in favour of plaintiff—Appeal pending by defendants—Right of plaintiff to set action down for trial.*—Section 2 of the Money-Lenders Act, 1900, requires a money-lender to carry on his business at his registered address, and at no other place.

Held, by Fletcher Moulton and Farwell, L.J.J., that a bill of sale under which money at interest was lent to the plaintiff by the defendants, a registered firm of money-lenders, the whole of which isolated transaction was carried out and completed at the plaintiff's private address, was void as being a carrying on of business by a money-lender not in accordance with the provisions of the above section.

The defendants entered an appeal to the House of Lords from that order. The plaintiffs took out a summons to set down for hearing his action against the money-lenders claiming damages for alleged trespass, they having taken possession of the goods at his house covered by the alleged bill of sale, which bill of sale by the order as stated above was held to be invalid. Eve, J., refused to make an order on the summons until the decision of the House of Lords was given, on the ground that the order would embarrass the defendants in their defence. The plaintiff appealed.

Held, by Fletcher Moulton and Buckley, L.J.J., that the fact

that the plaintiff had obtained an order in his favour did not debar him from setting down his action for trial before the defendants' appeal was heard and determined in the House of Lords.—*GADD v. PROVINCIAL UNION BANK, C.A.*, 615.

#### MORTGAGE:—

1. *Costs—Contractual right to costs—Discretion of court—Action—Priority—General costs of action—Costs of particular defence—Invalid defence.*—A mortgagee is entitled to the general costs of an action in which he successfully asserts his priority and in which he is guilty of no misconduct, and the court has no discretion to deprive him of such costs; but the court may, where the security is deficient, except from such the general costs of a particular issue upon which the mortgagee has failed, even though the raising of such issue by the mortgagee was perfectly justified.—*DEELEY v. LLOYD'S BANK (No. 2)*, *Eve, J.*, 419.

2. *Devolution—Mortgage kept alive for benefit of owner of equity of redemption—Intention that mortgage should endure for benefit of the heirs of the owner of the equity of redemption—Merger—Real or personal property.*—H. G., the owner of the equity of redemption of certain lands, subsequently (in 1882) obtained a transfer of part of the mortgage debt and the security therefor, being part of the said lands, keeping the mortgage on foot as a subsisting charge for the benefit of his heirs and assigns, and as a protection against mesne incumbrances. H. G. afterwards (in 1905) purchased lands subject to a mortgage, which the vendors and the mortgagee conveyed and transferred to him, keeping the mortgage on foot as a subsisting charge on the hereditaments conveyed as a protection to H. G., his heirs and assigns, against subsequent incumbrances, but for no other purpose.

Held, that the sums secured and the mortgages devolved on the personal representatives of H. G.—*GIBBON, RE, MOORE v. GIBBON, Neville, J.*, 177; 1909, 1 Ch. 367.

3. *Equitable assignment of part of mortgage debt by first mortgagees—Statutory power of sale—Sale by first mortgagees to assignees—Leave by fourth mortgagees (the assignees)—Possession and accounts by first mortgagees—Wilful default—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 17, 21 (4).*—First mortgagees declared themselves trustees for F. & Sons of part of the mortgage debt, and then assigned that part of F. & Sons without power to the latter to give receipts for any part of the principal and interest due on the security. F. & Sons did not give notice of the assignment to any person interested in the equity of redemption. The first mortgagees then, in exercise of their statutory power, sold the premises by auction to F. & Sons for the amount of principal and interest due to themselves.

Held, that the sale was valid, and that the statutory power of sale was not put an end to by the assignment.—*FLOWER & SON v. PRITCHARD, Joyce, J.*, 178.

4. *Foreclosure order nisi—Subsequent application by judgment creditor who has obtained equitable execution to be added as defendant—Extending period for redemption—Costs.*—When a mortgagee had obtained an order for foreclosure *nisi* against a company, a judgment creditor in another action against the company obtained the appointment of a receiver by way of equitable execution. The creditor now moved to be added as a defendant in the foreclosure action and to have further time to redeem.

Held, (1) that the order in *Campbell v. Holyland* (26 W. R. 109, 7 Ch. D., at p. 168) was the proper order to be made in these circumstances; (2) that it would be contrary to the practice of the court to extend the time for redemption; (3) that the creditor must pay the plaintiff's costs of the application.—*PARABOLA (LIMITED), RE, Warrington, J.*, 697.

5. *Priority—Mortgage to bank to secure current account—Notice of subsequent mortgage—Further advances—Tacking—Appropriation of payments.*—The rule in *Clayton's case* (1 Mer. 572) being a presumption of fact and not a rule of law will not be applied where it is contrary to the intention of the parties. Accordingly it will not be applied for the purpose of putting a mortgagee in a position as regards priority which the parties never intended.—*DEELEY v. LLOYD'S BANK, Eve, J.*, 399.

See also *Solicitor*.

MOTOR.—See Negligence.

#### NEGLIGENCE:—

1. *Motor-omnibus—Sent out on greasy road—Skidding—Negligence or nuisance—Risk taken by passenger.*—The plaintiff, when a passenger in a motor-omnibus, was injured by that vehicle running into an electric light standard, and the jury in the county court found that the plaintiff's injuries were caused by the negligence of the defendants in sending on to a greasy road a motor omnibus, which was likely to become, and in fact did become, uncontrollable. The Divisional Court held that judgment should have been entered

for the plaintiff, for a person by entering a motor-omnibus is not presumed to have taken the risk of its skidding upon a greasy road. The defendants appealed.

Held, Buckley, L.J., dissenting, that the defendants were entitled to judgment. The fact that the motor-omnibus "skidded" was not enough to establish either that the vehicle was a nuisance *per se* or that there was negligence on behalf of the defendants' servants in charge of it.

Decision of Divisional Court (reported 53 SOLICITORS' JOURNAL, 287, 73 J. P. 170) reversed.—*WING v. LONDON GENERAL OMNIBUS CO., C.A.*, 713.

2. *Skidding of motor-omnibus—Damage to standard lamp on footpath—Nuisance.*—Where damage is done by a motor-bus to fixtures erected upon the pavement, the fact that the motor-bus has so far deviated from its proper course as to run on to the footpath is evidence of negligent driving; and when anyone places a motor-bus or other vehicle which is likely to skid upon the highway, such person may be liable for placing a nuisance upon the road, and for negligent use of the highway.—*ISAAC WALTON & CO. v. VANGUARD MOTOR-BUS CO., K.B.D.*, 82.

3. *Trespasser in field bitten by savage horse—Scienter found—Field habitually used by public as short cut—Action against owner of horse—No duty to trespasser.*—X., a man who has been bitten by a savage horse, cannot maintain an action against Y., the owner of the horse, who knows that it is savage, if X. when he was bitten was a trespasser in Y.'s field, and this is so even if the field is habitually used by the public as a short cut.

*Per Darling, J.*—A man has a right to keep a savage animal; but if he does, he is bound to keep it in a place where it will not injure people lawfully there. He must not keep it with the intention of injuring anyone—even a trespasser.—*LOWERY v. WALKER, K.B.D.*, 544; 1909, 2 K. B. 433.

See also *Banker, Highway, Master and Servant, Railway, Ship*.

NUISANCE.—See Negligence.

#### PENSION:—

*Army officer's pension—Garnishee order—Receipt for Paymaster-General—Negotiable instrument—Army Act, 1881, s. 141.*—An army officer kept a separate account at his bank for his pension or retired pay. On the 1st of January, 1909, there was a balance of £6 in this account, which had previously been received by the officer as pension money. On the same date he sent to his bank a document which on the face of it was a receipt for £17, paid by the Paymaster-General to the officer on that date. This document, which was signed by the officer, had the following note at the foot of the sheet:—"This receipt must be presented for payment by a London banker, but may be negotiated in the country or abroad, and is to be left by the banker at the Paymaster-General's office one day for examination." The bank credited the officer with the £17 on the 1st of January, but only collected this sum from the Paymaster-General on the 7th of January. On the 1st of January a garnishee order was served on the bank by a judgment creditor of the officer for a larger sum than £6.

Held, that the £6, having been paid over by the Paymaster-General, had lost its character of pension, and was subject to the garnishee order, notwithstanding section 141 of the Army Act, 1881.

Held, also, that the document was not a negotiable instrument, and that the £17 was not subject to the garnishee order.—*JONES & CO. v. COVENTRY, K.B.D.*, 734.

#### PERPETUITY:—

*Rule against double possibilities—Application of rule to equitable interests.*—The rule against double possibilities applies alike to legal remainders and equitable interests.—*NASH, RE, COOK v. FREDERICK, Eve, J.*, 651.

#### POOR LAW:—

1. *Poor rate—Appeal—Notice of appeal—Notice to assessment committee—Entry and respite of appeal in absence of notice.*—An appellant to quarter sessions against a poor rate has the same right to have an appeal entered and respited where he has omitted to give the twenty-one days' notice to the assessment committee, required by section 1 of the Union Assessment Committee Act, 1864, as he has where he has omitted to give the notice to the overseers (or their successors in this respect), required by section 4 of the Poor Relief Act, 1743. Consequently, where the appellant appeals to the next quarter sessions without giving the twenty-one days' notice to the assessment committee, the quarter sessions are bound to enter and respite the appeal with a view to its being heard at the succeeding quarter sessions, if due notice is given in the meantime.

Decision of the Court of Appeal (Gorell Barnes, P., and Farwell, L.J., Fletcher Moulton, L.J., dissentiente, reported *sub nom. Rex*



*v. West Riding of Yorkshire, Ex parte Denaby and Cadeby Main Collieries (Limited)* (1908, 2 K. B. 635) affirmed.—DENABY OVERSEERS *v.* DENABY AND CADEBY COLLIERIES, *H.L.*, 418; 1909, A. C. 247.

2. *Poor rate—Appeal—Objection to valuation list—Waiver of non-compliance with requirements as to objection—Respite of appeal at respondents' request—Objection during currency of rate—Appeal against subsequent rate without fresh objection—Supplemental list approved in interval—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.*—In May, 1900, a valuation list for the parish of Ystradyfodwg was approved by the Assessment Committee of the Pontypridd Union, and it contained a hereditament belonging to the Rhondda Valley Breweries Co. Supplemental valuation lists were subsequently approved for the parish by the assessment committee at various dates, including the 4th of December, 1907, the 10th of October, 1906, and the 10th of April, 1907, and the hereditament in question was specifically referred to in the list approved of the 4th of December, 1907, but not in any of the other supplemental lists. On the 1st of November, 1906, a rate was allowed by justices in accordance with the list then in force, and on the 4th of November, 1906, notice of the rate being allowed was published. On the 10th of November the brewery company gave notice of objection to the assessment committee, which objection was heard on the 30th of November, 1906. On the 15th of April, 1907, a rate was made, and on the 22nd of May, 1907, the assessment committee gave their decision upon the above-mentioned objection, and affirmed the assessment. The brewery company on the 8th of June, 1907, gave notice of objection against the rate made on the 15th of April, 1907. No other notice of objection to the valuation list was given than that above-mentioned, and no appeal was entered by the company against the rate made on the 1st of November, 1906. On the hearing of the appeal on the 5th of November, the assessment committee took the point that notice of objection to the valuation list in accordance with which such rate had been made had not been given by the company, who therefore were not empowered by section 1 of the Union Assessment Committee Amendment Act, 1864, to be heard on appeal.

Held, that the objection taken by the committee was bad, inasmuch as the company had given notice of objection on the 10th of November, 1906, to the last deposited valuation list, and not having appealed from the rate made on the 1st of November, 1906 and no decision having been given by the Assessment Committee before the date of the making of the next rate—namely, on the 15th of April, 1907, the company were entitled to appeal against the subsequent rate without having first given a fresh notice of objection.—RHONDDA VALLEY BREWERIES *v.* PONTYPRIDD UNION, *C.A.*, 242; 1909, 1 K. B. 652.

3. *Union formed under local Act—Power of Local Government Board to dissolve by order local Act union—Power to unite parishes—Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), ss. 26 and 32—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 64—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 11.*—The Local Government Board have power, under section 11 of the Divided Parishes and Poor Law Amendment Act, 1876, by order to dissolve a union formed under a local Act.

Decision of Court of Appeal (1908, 2 K. B. 368) reversed.—LOCAL GOVERNMENT BOARD *v.* STONEHAM UNION, *H.L.*, 97; 1909, A. C. 57.

See also Slander.

PORTIONS.—See Settlement.

POWER:—

*Appointment—Power by will during coverture—Exercise of power during coverture—Death while discover—Valid exercise of power.*—A power given to a married woman to appoint by will during coverture is validly exercised by a will executed by her during coverture, although at the date of her death, when the will came into operation, she was discover.

*Burnham v. Bennett* (1 De G. & Sm. 813) and *Cave v. Cave* (8 De G. M. & G. 131) applied.—ILLINGWORTH, RE, *Eve, J.*, 616.

See also Appointment.

PRACTICE:—

1. *Company—Litigant in person—Managing director of company.*—The managing director of a company cannot appear as advocate to represent the company.—SCRIVEN *v.* JESCOTT, *K.B.D.*, 101.

2. *Discovery—Privilege—Member of trade union—Legal aid—Letters to society placing facts of alleged wrongful dismissal before committee—Claim that such communications were privileged.*—The appellant, a signalman, was dismissed from the service of the respondent company. He was a member of the Amalgamated Society of Railway Servants, and requested that his case should be

taken up by the society. An action claiming damages for wrongful dismissal having been commenced, the railway company took out a summons for discovery of all letters which had passed between the plaintiff and the society, giving the society the information which had led them to institute proceedings.

Held, that such letters were not legal professional communications and were not protected by the privilege attaching to such communications.—JONES *v.* GREAT CENTRAL RAILWAY CO., *H.L.*, 421.

3. *Inquiry—Jurisdiction—Plaintiff of unsound mind—No next friend—Inquiry whether competent to retain solicitor.*—The court has jurisdiction, on a proper case being made out, to direct an inquiry as to whether a plaintiff was, at the date of the writ, competent to retain a solicitor.—POMERY *v.* POMERY, *Eve, J.*, 631.

4. *Misjoinder of claims—Striking out embarrassing statement of claim—Election to proceed against one defendant—R. S. C. XVI. 4.*—The plaintiff claimed, as against one defendant, who had purchased the plaintiff's business, a sum of £5,563 in respect of capital due to him from the business. He also claimed, as against another defendant who had been appointed receiver and agent to wind up the business, damages for negligence. On a motion by the first named defendant to strike out the statement of claim as embarrassing,

Held, that the plaintiff must elect which of the two defendants he would proceed against.

Held, also, that the application was properly made by motion.—GREENWOOD *v.* GREENWOOD, *Eve, J.*, 61.

5. *Parties—Transmission of interest—Necessary or desirable party—Trustee in bankruptcy of defendant—Option of benefit to the bankrupt under order of court before bankruptcy—Beneficial interest of bankrupt in funds in court—Jurisdiction of Bankruptcy Court to re-open accounts ordered under decree of the Chancery Division—R. S. C. XVII. 4.*—An order was made in an action wherein Mrs. J. was the plaintiff and W. H. H. one of the defendants, that at the request of the defendant W. H. H., and at his risk as to costs, an inquiry should be made as to whether any and what allowance should be made to him for the maintenance of certain beneficiaries out of certain sums found due from him under accounts ordered to be taken in the action; that certain shares (in which W. H. H. was interested as a beneficiary) should be sold by the trustees, and the proceeds paid into court, and that any of the parties might be at liberty to apply as to payment of the above-mentioned sums. W. H. H. became bankrupt; the plaintiff obtained an order to carry on the proceedings against his trustee in bankruptcy. The latter applied by summons to discharge the order.

Held, that it was desirable that the trustee in bankruptcy should be made a party in order to enable the action to proceed in respect of the sums as to which W. H. H. had an election for an inquiry and to bind his estate by the order relating to the shares. The Bankruptcy Court has no jurisdiction to conduct an inquiry as to maintenance, ordered upon terms by the Chancery courts, and the Bankruptcy Court cannot go behind an order properly made by the Chancery Division, except for inadequacy of consideration, fraud, or collusion.—LYKES, RE, JARAM *v.* HOLMES, *Joyce, J.*, 267.

6. *Pauper—Right to sue in form pauperis—Married woman—Annuity subject to restraint against anticipation—Husband not joining in affidavit as to means—R. S. C. XVI. 22.*—A married woman, whose only income, apart from what she earned in teaching one or two girls, was an annuity of £52 a year, subject to restraint on anticipation, made an affidavit, in which her husband did not join, in which she deposed that she was not worth £25, her wearing apparel and the subject-matter of the action alone excepted.

Held, that she was not entitled to sue *in form pauperis*. *Semble*, the husband of a married woman who seeks to sue *in form pauperis* must join in her affidavit as to means.—ATKIN'S TRUSTS, RE, SMITH *v.* ATKIN, *Eve, J.*, 61; 1909, 1 Ch. 741.

7. *Pleading—Defence not specially pleaded—Inevitable accident—R. S. C. XIX. 15.*—At the trial of an action for negligence against two defendants, evidence was given to show that the accident was inevitable, although that defence was not upon the pleadings. Sutton, J., left this question to the jury, and they found for the defendants. The plaintiff appealed on the ground (1) that the learned judge had improperly admitted evidence of an inevitable accident, there being no such defence raised by the defendants in their pleadings; and (2) that the learned judge was wrong in law in not allowing an adjournment to the plaintiff, as the plaintiff was taken by surprise on the defendants placing evidence before the jury that it was the negligence of a third party which caused the defendants' vehicles to collide and injure the plaintiff.

Held, that as upon the facts it was obvious that the jury might have to consider the question of inevitable accident, the giving evidence to support that defence was not a matter of "surprise" which entitled the plaintiff to an adjournment. At the trial the defendants elected to stand on their pleadings, and therefore no

amendment was asked for. The ruling of the judge was therefore right, and there being no misdirection alleged except the allowing the jury to consider the question of inevitable accident, the appeal failed.

*Semble, per Lord Alverstone, C.J., that the decision in Dowager Countess of Winchelsea v. Beckly (2 T. L. R. 300) (relied on by the plaintiff) was wrongly decided.—RUMBOLD v. LONDON COUNTY COUNCIL, C.A., 502.*

8. "Preservation or inspection of property"—Ship—Constructive total loss—Application by underwriters for order that ship should be brought to England for inspection and repair—*R. S. C. L. 3.*—In an action on a policy the plaintiffs claimed for a constructive total loss of the ship. While on a voyage covered by the policy the ship had struck a reef, but had been got off and towed into dock at Singapore, where she still was. The defendants, who were underwriters, moved for an order under ord. 50, r. 3, that the ship should be temporarily repaired at their expense, and at their risk be brought back to England before the date of the trial. *Bray, J.*, at chambers, thought that he had no jurisdiction, and dismissed the application.

Held, that there was jurisdiction under ord. 50, r. 3, either on the ground of "preservation" or "inspection," but as the defendants must be placed under terms, the matter must go back to the learned judge to decide the terms on which the order should be granted.

*Chaplin v. Puttick (1898, 2 Q. B. 160) followed.—STEAMSHIP "NEW ORLEANS" Co. v. LONDON PROVINCIAL MARINE AND GENERAL INSURANCE Co., C.A., 286; 1909, 1 K. B. 943.*

9. Restraining proceedings abroad—Divorce—Judicial separation—Wife's suit—Divorce proceedings by husband in foreign country—Injunction to restrain.—A defendant will not be restrained from commencing and prosecuting proceedings in a foreign country to enforce rights which he has there acquired against a plaintiff under the law of that foreign country. Consequently, when a wife had commenced proceedings for judicial separation, the court declined to restrain the husband, who had acquired a foreign domicile, from prosecuting divorce proceedings in the foreign country.—*VARDOPULO v. VARDOPULO, C.A., 469.*

10. Service of writ out of the jurisdiction—Action for damages and an injunction—Allegation that claim for injunction was illusory, and made solely for purpose of founding jurisdiction—Offer by defendant to give on undertaking not to issue any more of the circulars complained of—*R. S. C. 1883, XI. 1 (j).*—The defendants, a Scottish limited company registered in Scotland, issued a circular stating that they had the exclusive right to print and publish picture postcards of the Franco-British Exhibition, and warning customers not to purchase picture postcards of the exhibition printed and published by the plaintiffs, an English firm carrying on business in London. The plaintiffs issued the writ in the action claiming damages for libel and an injunction. The master, whose decision was affirmed by the judge, granted leave to serve the writ out of the jurisdiction on the defendants at Dundee. The defendants appealed, on the ground that, having offered to undertake not to issue any more of the circulars, the court would not order an injunction to issue, and further that in the circumstances it was not the proper remedy to seek. Consequently the claim for an injunction was not *bona fide*, and the order was wrongly made.

Held, that, as, at the time that the writ was issued, the defendants were sending out the circulars complained of, the subsequent offer of an undertaking to desist from doing so was no defence to the plaintiffs' claim for an injunction, and further that this was a case where the claim for an injunction could properly be granted in the discretion of the court, and was, therefore, a *bona fide* claim on which jurisdiction could be founded.—*E. ALEXANDER (LIMITED) v. VALENTINE & SONS (LIMITED), C.A., 13.*

11. Staying proceedings—Agreement to refer to German court—Contract of service—Injunction—Stipulation negative in form but affirmative in substance.—An agreement to refer disputes to a foreign tribunal entitles a defendant to a stay of proceedings in this country unless a case is made out for an injunction.

*Law v. Garrett (8 Ch. D. 26) applied.*

A stipulation by an agent not to give notice to leave his principal's service is, though negative, affirmative in substance, and ought not to be enforced by injunction.

*Davis v. Foreman (1894, 3 Ch. 654) followed.*

The principle on which the court acts in restraining an employee from divulging matters relating to his master's business is that there is an implied term of the contract of service not to use to the master's detriment information obtained in the course of the service.—*KIRCHNER & Co. v. GRUBAN, Etc., J., 151; 1909, 1 Ch. 413.*

12. Pleading—Striking out on the ground of embarrassment—Evidence of fraud—Promissory notes—Bona-fide holders for value.—

In an action on two promissory notes the defendant pleaded that for a long period he had been under the improper influence of certain persons who had fraudulently conspired to obtain large sums of money from him, and that the two notes sued on were so obtained from him. He did not allege that the plaintiffs were parties to this fraud, or were other than *bona-fide* holders of the notes in due course of business. With his defence he delivered particulars of these other numerous transactions. The plaintiff moved that all these particulars should be struck out, and the master ordered the defendant to deliver fresh particulars confined to the fraud involved in the inception of the two promissory notes sued on.

Held, that the order of the master should be restored.

*Per Lord James of Hereford.*—Although he thought the order directing that the particulars should stand as originally delivered was wrong, it was not to be understood from the fact that this House restored the order of the master that the defendant must not at the trial give evidence of the whole history of the alleged fraudulent conspiracy.—*STAFFORDSHIRE FINANCIAL Co. v. HILL, H.L., 446.*

13. Subpoena—Setting aside—Minister of the Crown—Witness—Where the court is satisfied that a subpoena has been served upon a person whose evidence would not be relevant to the issue, and that such subpoena has been served, not with the object of obtaining relevant evidence, but for some ulterior purpose, it has jurisdiction, both in civil and criminal cases, to set such subpoena aside. Ministers of the Crown are not exempt from the obligation to obey a subpoena.—*REX v. BAINES, K.B.D., 101; 1909, 1 K. B. 258.*

14. Writ—Service on company—Registered office—Service at unregistered office—Setting aside writ—*R. S. C. IX. 8.*—The only way in which a writ can be served on a company is by leaving it at or sending it by post to the registered office of the company. It is not sufficient to serve it at an office which, though an office of the company, is not the registered office of the company.—*VIGNES v. STEPHEN SMITH & Co., Etc., J., 716.*

See also Appeal, Costs, Money-lender.

#### PROBATE:—

1. Administration de bonis non—Out-landing grant—Further grant to second applicant—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 74.—Letters of administration had been granted to a son of a deceased woman, who was entitled to a share of an estate being administered in the Chancery Division. Her personal representative was a necessary party, but the son's whereabouts had ceased to be known. The court allowed a further grant to go under section 74 of the Court of Probate Act, 1857, to her daughter—the only other next-of-kin—on the applicant swearing the belief that her brother was dead or beyond the seas, and also undertaking to pay into court the share her brother would be entitled to if alive.—*SAKER, IN THE GOODS OF, P.D., 562.*

2. Administration—Grant to a creditor—Assignee of debt—Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-section 6.—Under certain circumstances the court will grant administration to a creditor who is an assignee of a debt.—*COSH, IN THE GOODS OF, P.D., 755.*

3. Practice—Affidavit by plaintiff.—The court will not allow the solicitor of a proposed plaintiff in a probate action to swear the affidavits required by ord. 5, r. 15.—*LUKE, IN THE GOODS OF, P.D., 734.*

4. Practice—Summons—Service—Probate Rules of 1862, r. 100—*R. S. C. LIV. 4 (e)*—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16, 23—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 18.—A rule in force in the Court of Probate at the time of the commencement of the Judicature Act, 1875, is not repealed or annulled by the making of a rule of the High Court dealing with the same subject-matter which does not expressly apply to the Probate Division.

By rule 100 of the Rules of the Court of Probate, 1862, a summons in a probate action is to be served one clear day before the return thereof.

Held, that this rule is still in force, and is unaffected by *R. S. C. ord. 54, r. 4 (e)*, which requires two clear days' notice to be given.—*HAILSTONE, RE, C.A., 321; 1909, P. 118.*

5. Will torn in pieces—Admitted to probate—Missing words—Paper with words annexed to will—Wills Act, 1837 (1 Vict. c. 26).—Where it appeared that a will had been torn in pieces in a testator's presence without his authority, but that the pieces had been subsequently preserved with his assent as representing his testamentary intentions, it was

Held, that the will could be admitted to probate. Missing words will not be read into a will by the court, but when proved may be contained in a paper attached to the will.—*GILL v. GILL, P.D., 359; 1909, P. 157.*



**PUBLIC AUTHORITIES :—**

*Public authorities protection—Continuous pollution of stream by public authority—Death of cattle from drinking in stream—Continuance of injury or damage—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*—A stream passed alongside the plaintiff's land, and the plaintiff's cattle drank from it. The stream was polluted by an effluent from the defendants' sewage works, and three of the plaintiff's bullocks died at intervals from drinking the polluted water, the last of them dying more than six months before the date at which the plaintiff brought an action against the defendants for the loss of his bullocks. It appeared that the stream was continuously polluted, and that the pollution continued at the date when the plaint was issued.

Held, that the case was one of "continuance of injury or damage" within the meaning of section 1 of the Public Authorities Protection Act, 1893, and that therefore that section afforded the defendants no protection.—*HAGUE v. DONCASTER RURAL DISTRICT COUNCIL, K.B.D.*, 135.

**PUBLIC HEALTH.**—See Local Government, Rating.

**PUBLIC TRUSTEE.**—See Trustee.

**RAILWAY :—**

1. *Carriage of goods—"Rates authorized"—Reductions.*—A difference having arisen between the applicants and the railway company under section 2 of the schedule of the Great Western Railway Company's (Rates and Charges) Order Confirmation Act, 1891, as to the amount whereby the authorized rates for conveyance should be reduced in respect of merchandize carried by the railway company in trucks provided by the applicants,

Held, that the deduction was to be made from the rate in force as specified and shewn by the company's rate-book, and not from the maximum rate which the company might charge for the conveyance of merchandize under their Act.—*SPILLERS & BAKERS (LIMITED) v. GREAT WESTERN RAILWAY CO., C.A.*, 285; 1909, 1 K. B. 604.

2. *Compulsory powers—Powers exercisable for limited period—Expiration of time—Company in lawful possession of land—Power to construct railway thereon—Ultra vires.*—A railway company were authorized to construct a railway, but a section of the special Act provided that if the railway was not completed within five years then the powers given by the Act to the company for making and completing the railway were to cease.

Held, dismissing the appeal, that as the company had before the expiration of the five years lawfully acquired the right to use the land, they could make the railway under their common law powers, notwithstanding the expiration of the period for so doing given by statute.

Decision of Court of Appeal (1908, 2 Ch. 644) affirmed.—*MIDLAND RAILWAY CO. v. GREAT WESTERN RAILWAY CO., H.L.*, 671.

3. *Extension—"Separate undertaking"—Liability of company for debt in respect of separate undertaking—Claim by creditors—Judgment against company generally.*—An existing railway company, incorporated by statute, was authorized by a special Act passed in the year 1897 to construct an extension line from its former terminus to the City of W. Such Act made the existing company liable to penalties, and provided that the new line should form a separate undertaking, and authorized the existing company to raise additional capital. Contractors who, pursuant to a contract made between them and the existing company, constructed the extension line instituted an action for a debt admittedly due to them in respect of the construction works.

Held, that the contractors were entitled to judgment, and that the same should be not only enforceable against the assets arising under the Act of 1897, but also against the assets of the company.—*PEARSON & SON v. DUBLIN AND SOUTH-EASTERN RAILWAY, H.L.*, 319; 1909, A. C. 217.

4. *Negligence—Defective fence—Child trespassing on premises—Injury to child—Turntable on siding—Invitation to danger.*—The defendants, a railway company, maintained a siding and turntable on a plot of land adjacent to a public road which crossed their line by a bridge. The siding was approached from the road by a gate which was kept locked; and the road leading to the bridge was separated from the defendants' premises by a clay bank and thorn hedge. There was a gap in the hedge large enough for a child to pass through, and a track more or less defined leading to the site of the turntable. The plaintiff, a little child, obtained access to the defendants' premises with two older boys, who placed him on the turntable to give him a ride, with the result that he was severely injured. There was evidence that on at least one former occasion a servant of the company had seen boys playing on the turntable, who on his approach ran away. In an action tried before the Lord Chief Justice of Ireland and a special jury judgment was entered for the plaintiff, with damages, but on

appeal that judgment was reversed, the Court of Appeal holding that the defective condition of the defendants' hedge was not the effective cause of the accident, and that the plaintiff, being a trespasser, and there being no evidence of invitation or allurement by the defendants, judgment should be entered for the defendants.

Held, allowing the appeal, that there was evidence to support the findings of the jury, and that the defendants were liable in the circumstances for want of reasonable care.

Decision of the Court of Appeal (1908, 2 I. R. 242) reversed.—*COOKE v. MIDLAND GREAT WESTERN RAILWAY OF IRELAND, H.L.*, 319; 1909, A. C. 229.

5. *Special constables—Action for false imprisonment—Liability of railway.*—Special constables employed by a railway under the authority of an Act of Parliament are servants of the railway company and not of the Crown, and in the event of their making an arrest without reasonable cause the railway company, as their employer, is liable to an action for false imprisonment.—*LAMBERT v. GREAT EASTERN RAILWAY CO., C.A.*, 732.

See also Highway, Rating, Ship.

**RATING :—**

1. *General district rate—"Railway"—Tramway constructed under special Acts and connecting street tramways—Partial exemption from rates—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (6)—Blackpool and Fleetwood Tramroad Acts, 1896 and 1898 (59 & 60 Vict. c. cxviii.; 61 & 62 Vict. c. cl.).*—A tramroad was constructed under the powers of a special Act, which incorporated certain provisions of the Railway Clauses Act, 1845, and of the Tramways Act, 1870, the provisions of the former Act to apply only to the tramroad, and for the purposes thereof "the tramroad shall be deemed to be a railway," and the provisions of the latter Act to apply only to the tramway. The tramroad was constructed to connect two tramway lines at each end of the tramroad, and in appearance was like a railway. It was laid down on land belonging to the tramroad company and was fenced off from adjoining lands, except where it crossed roads on the level, and the tramroad and tramways were worked as one undertaking. The company claimed to be rated at a lower rate in respect of their tramroad, on the ground that it was a "railway" within section 211, sub-section 1 (6), of the Public Health Act, 1875. The Court of Appeal decided in favour of the company.

Held, affirming the decision of the Court of Appeal (1907, 1 K. B. 568), that the tramroad was a "railway constructed under the powers of an Act of Parliament for public conveyance" within the meaning of section 211 (1) (6) of the Public Health Act, 1875, and was, therefore, entitled to the partial exemption from general district rates conferred on such railways by that sub-section.—*BLACKPOOL AND FLEETWOOD TRAMROAD CO. v. THORNTON DISTRICT COUNCIL, H.L.*, 445; 1909, A. C. 264.

2. *Poor rate—Railways—Decrease in receipts from competition of tramways, tube railways, and motor-omnibuses—Claim to be inserted in provisional list—Valuation (Metropolis) Act, 1869, ss. 46, 47.*—A decrease in the receipts of the business of a railway company within the metropolis caused by competition of tramways, tube railways, and motor-omnibuses is an alteration in value within the meaning of section 47 of the Valuation (Metropolis) Act, 1869.—*REX v. SOUTHWARK ASSESSMENT COMMITTEE, C.A.*, 133; 1909, 1 K. B. 274.

3. *Poor rate—Railway—Link line—Mode of ascertaining—Profits attributable to the occupation of portions of the railway outside the parish—Parochial principle—Cost of construction—Money advanced by one company to another at interest.*—A line of railway about eight miles in length was constructed by the Great Central Railway Co. under a statutory agreement with the Great Western Railway, the latter company advancing the money for the construction of the line at 3½ per cent. interest per annum. The line was constructed for the purpose of linking together the railway systems of the respective companies for the purpose of more convenient interchange of traffic between them. There were no stations or sidings on the line itself; the line was of no value except for the purpose of interchange of traffic, and no person or company other than the Great Central and the Great Western companies could be found who would be willing to acquire the line. The Court of Appeal held that in valuing this portion of the line for rating purposes it was legitimate to take into consideration the interest payable by the one company to the other on the cost of construction, and accordingly they reversed the decision of the Divisional Court.

Held, allowing the appeal by the railway company, that since the interest payable on the cost of construction of the line afforded no criterion of the rent a hypothetical tenant would give for the line, a portion of a line in a parish through which it passed must be valued for rating purposes on the parochial principle—namely, by computation from the net earnings of the line in the parish.

Decision of Divisional Court (1906, 1 K. B. 597) restored.—*GREAT CENTRAL RAILWAY v. BANBURY UNION*, *H.L.*, 177; 1909, A. C. 78.

4. *Poor rate—Railway—Link line forming part of system—Parochial principle—Profits attributable to the occupation of portions of the railway outside the parish.*—The Sheffield Union appealed from a decision of the Court of Appeal (reported 1908, 1 K. B. 750), which followed a previous decision of that court, given in *Great Central Railway Co. v. Banbury Union* (1907, 1 K. B. 717).

Their lordships held that, having reversed the decision of the Court of Appeal in the *Banbury* case, the appeal in this case must also be allowed.—*GREAT CENTRAL RAILWAY v. SHEFFIELD UNION*, *H.L.*, 177; 1909, A. C. 78.

5. *Poor rate—Rateable value—Expense necessary to command rent—Deductions—Rent-charge imposed for protection of lands from inundation—Rent-charge affecting some only of protected hereditaments—Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.*—By a local Act certain lands in a level under the jurisdiction of Commissioners of Sewers were made subject to annual rent-charges for the purpose of raising the funds necessary for the protection of the land against incursions of the sea. Other lands in the level, which were also protected by the same works, had become and were exempt from any liability to contribute towards the costs of the works.

Held, that the appellant was in each case entitled to a deduction from the rateable value in respect of the rent-charge or such proportion thereof as was the proper share of his premises, on the footing that all the protected lands were taken to contribute rateably having regard to the protection they received.—*STEAD v. NEWPORT UNION*, *H.L.*, 60; 1909, A. C. 35.

6. *Poor rate—Rating of owners—House wholly let out in apartments or lodgings—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4, 6.*—The owners of dwelling-houses in boroughs wholly let out in apartments or lodgings not separately rated are liable to be rated under section 7 of the Representation of the People Act, 1867.

*Per* Vaughan Williams, L.J.—The provisions of sections 3 and 4 of the Poor Rate Assessment and Collection Act, 1869, do not affect the Act of 1867 in any respect.

*Davis v. Wallis* (1908, 2 K. B. 134) reversed.—*WHITE v. ISLINGTON BOROUGH COUNCIL*, *C.A.*, 97; 1909, 1 K. B. 133.

RES JUDICATA.—See London.

#### RESTRAINT OF TRADE:—

1. *Agreement not to practise as an architect or surveyor—Acting as manager.*—A covenant not to practise a profession is broken by acting as manager to a practising member of that profession.

*Pulmer v. Mallet* (36 Ch. D. 411) explained and followed.—*ROBERTSON v. WILMOTT*, *Warrington, J.*, 631.

2. *Public-house—Agreement in restraint of trade—"House"—Words construed as limited by the subject-matter of agreement—Construction aiding legal effect.*—Upon the sale by the defendant to the plaintiff of the defendant's interest in a public-house and premises licensed for the sale of liquors, together with the goodwill, the defendant agreed that she would not "exercise, carry on, or be in any manner, directly or indirectly, concerned in any house for the sale of exciseable liquors within an agreed distance during the occupancy of the premises by the plaintiff."

Held, that the words "house" should be construed according to the subject-matter of the agreement as public or licensed house, and not as any premises upon which the sale of liquors might be carried on, and that the agreement was not too wide.—*CATTERMOUL v. JARROLD*, *Neville, J.*, 244.

#### REVENUE:—

1. *Estate duty—Allowance—Incumbrances—Bonâ-fide creation—Wholly for the deceased's own use and benefit—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 7 (1) (a).*—In considering whether an incumbrance created by an owner of an estate had been created *bonâ-fide* within the meaning of section 7, sub-section 1 (a), of the Finance Act, 1894, the motive which actuated him in creating the incumbrance the court is not concerned with, and, provided that the incumbrance is within the law, and made without dishonesty, the fact that the motive was admittedly to lessen the payment of estate duty does not prevent the incumbrances from being *bonâ-fide*, and one in respect of which deduction could be claimed.

So held by Lord Loreburn, C., and Lords Macnaughten and Atkinson, but dissented from by Lords Collins and Shaw.

Decision of Bray, J., affirmed by Court of Appeal (reported respectively 1907, 2 K. B. 923, and 1908, 2 K. B. 729), upheld by the majority of the House.—*ATTORNEY-GENERAL v. DUKE OF RICHMOND*, *H.L.*, 713.

2. *Estate duty—Incidence—General power of appointment by will—Appointment—Residue—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9 (1).*—When a testator, in the exercise of a general testamentary power, appoints personal property, the estate duty payable in respect of the appointed property is not payable out of that property, but out of the general personal estate of the testator.

*Re Moore* (1901, 1 Ch. 691), *Re Dixon* (1902, 1 Ch. 248), *Re Fearnside* (1903, 1 Ch. 250), and *Re Orlebar* (1908, 1 Ch. 136) approved.

*Re Treasure* (1900, 2 Ch. 648), *Re Maddock* (1901, 2 Ch. 372), *Re Power* (1901, 2 Ch. 659), and *Re Dodson* (1907, 1 Ch. 284) overruled.—*HADLEY, RE, C.A.*, 46; 1909, 1 Ch. 20.

3. *Income tax—Brewery company—Profits—Deductions—"Tied houses"—Compensation levy—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Schedule D—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Schedule D—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 3.*—The compensation levy imposed by section 3 of the Licensing Act, 1904, upon a brewery company who are landlords of tied houses is an expense incurred for the purposes of their trade, which may be deducted from the profits of their trade in arriving at the assessable amount of such profits for the purposes of the Income Tax Acts.—*SMITH v. LION BREWERY CO., C.A.*, 696; 1909, 1 K. B. 711.

4. *Income tax—Exemption—Charitable purposes—Advancement of education—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Schedule A, No. VI., s. 61, Schedule C, s. 88, Schedule D, s. 105.*—The words "charitable purposes" in the exemptions to the Income Tax Act, 1842, ought to have the wide technical meaning given to them that is attached to those words in English law. Property which is vested in and applied by a university for the advancement of education is, therefore, exempt from income tax.—*REX v. INCOME TAX SPECIAL COMMISSIONERS, C.A.*, 319.

5. *Income tax—Incumbent of benefice—Profits accruing by reason of office—Easter offerings—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 146, Schedule E, r. 1.*—"Easter offerings" are assessable to income tax under rule 1 of section 146 of the Income Tax Act, 1842, Schedule E, as being "profits accruing" to an incumbent of a benefice "by reason" of his office.

Decision of the Court of Appeal (1907, K. B. 688) affirmed.—*COOPER v. BLAKISTON, H.L.*, 149; 1909, A. C. 104.

6. *Stamp duty—Company—Increase of registered capital—Authorized capital—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 112—Finance Act, 1899 (62 & 63 Vict. c. 9), s. 7—Revenue Act, 1903 (3 Ed. 7, c. 46), s. 5.*—A limited company passed a resolution authorizing the directors to increase the capital of the company by an amount not exceeding £5,000,000. This was to be done by the creation and issue from time to time of £5 shares. The resolution was carried out, but only so as to increase the capital by £3,000,000. Stamp duty was paid on this amount. The Crown claimed that stamp duty was payable on £5,000,000, which was the amount of increased capital authorized by the resolution.

Held, that the words "registered capital" in section 112 of the Stamp Act, 1891, must be read as meaning "authorized capital," and, as £5,000,000 was the amount of increased capital authorized by the resolution of the company, stamp duty was payable on that amount.—*ATTORNEY-GENERAL v. ANGLO-ARGENTINE TRAMWAYS CO., K.B.D.*, 358; 1909, 1 K. B. 677.

7. *Stamp duty—"Settlement"—Alteration of security by subsequent deed—Equity of redemption unaltered by change of security—Stamp Act, 1891, s. 62, and Schedule I.*—By arrangement between the parties, property which had been charged (*inter alia*) to secure a life annuity of £400 to the settlor's wife, if she survived him, was sold, and two deeds were executed as substituted security. The commissioners decided that the second deed of substituted security was a "settlement," and was liable to be stamped as such with an *ad valorem* stamp.

Held, affirming the decision of the First Division of the Court of Session in Scotland (46 Sc. L. R. 276), that as the equity of redemption was not altered by the deed of security, the deed was not a settlement.—*INLAND REVENUE COMMISSIONERS v. OLIVER, H.L.*, 649.

8. *Succession duty—Entail—"Acceleration" of succession—Death of tenant for life—Liability of heir of entail in possession to duty on original succession—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 15.*—A tenant for life of settled real estate and the tenant in tail in remainder executed in 1872 a disentailing deed, which was duly registered in 1875. On the death of the original tenant for life in 1898 the Crown claimed succession duty.

Held, that succession duty was rightly claimed under section 15 of the Succession Duty Act, 1853.

*Northumberland v. Attorney-General* (1905, A. C. 408) considered and followed.



Decision of Court of Session (1907, Sess. Cas. 849, 45 Sc. L. R. 572) affirmed.—BUCHAN (EARL) v. LORD ADVOCATE, *H.L.*, 116; 1909, A. C. 166.

**RIVER:—**

*Pollution—Manufacturing effluent—Sewage—Discharge through sewer—Rivers Pollution Prevention Act, 1876* (39 & 40 Vict. c. 75), ss. 3, 4, 7, 10.—The discharge of a manufacturing effluent into a sewer communicating with a river so that the river was polluted by such effluent within the meaning of section 4 of the Rivers Pollution Prevention Act, 1876, is an offence under that section.—BUTTERWORTH v. WEST RIDING RIVERS BOARD, *H.L.*, 97; 1909, A. C. 45.

See also Local Government, Public Authorities.

SAVAGE ANIMAL.—See Negligence.

**SETTLEMENT:—**

1. *Covenant to settle after-acquired property—Property by lex loci incapable of being transferred—Land in Jersey.*—A covenant to settle after-acquired property does not extend to real property, which, according to the *lex loci*, is not capable of being transferred, except for adequate pecuniary consideration.

*Re Dunsany's Settlement* (1906, 1 Ch. 578) applied.—PEARSE'S SETTLEMENT, *RE, Eve, J.*, 82; 1909, 1 Ch. 304.

2. *Gift to illegitimate children—Illegitimate child—En ventre sa mère.*—A settlement was made by a mother providing for the children of a daughter who had gone through the ceremony of marriage with her deceased sister's husband. Three weeks after the settlement a child was born to the daughter.

Held that the child took under the settlement.

*Re Shaw, Robinson v. Shaw* (1892, 2 Ch. 573) overruled.—EBBERN v. FOWLER, *C.A.*, 356; 1909, 1 Ch. 578.

3. *Portions of younger children vesting at twenty-one—Younger son afterwards becoming elder son.*—In the absence of some express provision to the contrary in a settlement a younger child takes an interest in a portion, which is liable to be divested in the event of his becoming an elder son.—STAWELL'S TRUSTS, *RE, POOLE v. RIVERSDALE, C.A.*, 542.

4. *Power of appointment—Remoteness—Rules against perpetuities and double possibilities—Object of power concurring in appointment to a person not an object—Trust for any child of the donee attaining twenty-three years of age—Power to appoint to the issue of the settlor and any wife of his subject to a life interest in the settlor and such wife—Appointment by the settlor's will to his daughter—Resulting trust.*—The donees of a power of appointment appointed to their son, an object of the power, for life and then to any wife of such son, the wife not being an object of the power, for her life. The son was a party to the deed of appointment.

Held, that the appointment to the wife was good, as the deed operated as a settlement by the son of the appointed fund.

A settlement upon any children attaining twenty-three years of age of the settlor by any wife held void as infringing the rules against perpetuities and double possibilities.

A power of appointment to the issue of the settlor by any wife, subject to the life interests of the settlor and his wife, such issue to be born in his lifetime, is not validly exercised by an appointment by the settlor's will to the settlor's daughter.—WHITTING v. WHITTING, *Neville, J.*, 100.

5. *Strict settlement—Heirlooms—Chattels to go with realty—Time of vesting—Vesting in tenant in tail before possession—Intention.*—Chattels were settled upon trust to be used, held and enjoyed by the person for the time being entitled to freeholds settled in strict settlement, but so that they should not vest absolutely in any tenant in tail male, or in tail by purchase who should not attain the age of twenty-one, but who, nevertheless, should be entitled to the use and benefit thereof during minority.

Held, that the chattels vested absolutely in a tenant in tail, who attained twenty-one, though he died in the lifetime of the tenant for life.—CHESHAM'S TRUSTS, *RE, VALENTIA v. CHESHAM, Eve, J.*, 197.

See also Revenue.

**SHIP:—**

1. *Agreement between master and crew—Stipulations contrary to law—Merchant Shipping Act, 1894, ss. 113, 114, 221, 226.*—A proposed agreement between the master and owners of a vessel and the crew contained a stipulation relating to punishments in respect of the offences of not joining ship and absence without leave different from those provided by the Merchant Shipping Act, 1894.

Held that such a stipulation was contrary to law within the meaning of the Act.—MERCANTILE STEAMSHIP CO. v. HALL, *K.B.D.*, 562.

2. *Bill of lading—Exceptions—Certificate by Lloyd's surveyor—Damaged cargo—Unseaworthiness—Liability of charterers and shipowners.*—Under the terms of a bill of lading shipowners were exempted from liability in respect of a cargo of frozen meat shipped from South America, provided they obtained a certificate of Lloyd's surveyor in the United Kingdom that the refrigerating machinery and insulated spaces were in a fit and proper condition. The liability of the owners was further excepted in respect of damage occasioned by or arising from the default of officers, refrigerating engineers, &c., by or from any accidents, &c., or from unseaworthiness, provided reasonable means were taken to provide against such default, accidents &c., and unseaworthiness. It was proved at the trial that the certificate was given by a surveyor nominated by Lloyd's agent at Montevideo, and that the damage was caused by unseaworthiness in respect of the refrigerating machinery, due to the neglect of the ship's agents and the refrigerating engineer.

Held, that the shippers were not bound by such certificate, and as reasonable means were not taken, the owners were not protected by the bill of lading from the ordinary liability for unseaworthiness.—SOUTH AMERICAN EXPORT SYNDICATE v. FEDERAL STEAM NAVIGATION CO., *K.B.D.*, 270.

3. *Bill of lading—Exceptions—Negligence of shipowner's servants.*—Sugar was carried under a bill of lading, which contained exceptions relieving the shipowners from liability for damage arising from, *inter alia*, defects in machinery or neglect of the engineers. It also contained this condition, in clause 10: "It is agreed that the exercise by the shipowners or their agents of reasonable care and diligence in connection with the ship, her tackle, machinery and appurtenances shall be considered a fulfilment of every duty, warranty, or obligation, and whether before or after the commencement of the said voyage." The sugar was damaged by water getting into the hold through a three-way cock in a pipe which was not carefully turned, and so admitted the water.

Held, that the three-way sea-cock was an equipment dangerous in itself, and that the evidence shewed that the chief engineer was ignorant of its operation. The ship was not in the circumstances fit to carry the goods of the appellants, and the damage being due to the unseaworthiness of the ship, the appellants were not protected by clause 10 of the conditions in the bill of lading.

Decision of the Court of Appeal (reported 1909, P. 93, 71 L. J. P. 13) reversed.—"SCHWAN," *THE, H.L.*, 696.

4. *Bill of lading—Goods discharged at Penang from steamer—Receipt given by landing agents' representative—Goods fraudulently disposed of without production of bill of lading or delivery order—"Delivery"—Damages for non-delivery claimed by bank—Clause in bill of lading providing for cesser of liability of company.*—The appellant bank became the holder for value of bills of exchange drawn against bills of lading, under which goods were consigned to the respondents to be conveyed by steamer to Penang, there to be delivered "to order or assigns." On arrival at the port of Penang the goods were delivered on to lighters and taken to the wharf and the master received a clean receipt from the landing agents B. & Co.'s representative. Bills of exchange were accepted on the arrival of the goods by F. & Co., and were discounted by the bank, but on presentation for payment were dishonoured. The bank produced the bills of lading, which were endorsed in blank and were their security for their advance, and claimed the goods, but they were not forthcoming, having been taken away from the wharf, without the production of a bill of lading or a delivery order, by the representative of F. & Co., acting in collusion with the representative of B. & Co., and had already been disposed of in fraud of the persons entitled. The claim by the bank against the steamship company having been dismissed by the Colonial courts, the bank appealed. The respondents relied on the following clause printed at the foot of the bill of lading as saving them from liability: "In all cases and under all circumstances the liability of the company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee."

Held, that this clause afforded complete protection to the respondent company and that the appeal therefore should be dismissed.—CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA v. BRITISH INDIA STEAM NAVIGATION CO., *P.C.*, 446; 1909, A. C. 369.

5. *Bill of lading—Railway company—Unreasonable condition—Liability of company—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7—Railway Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 31.*—A railway company contracted to carry a cargo by one of their steamers under a bill of lading, which contained a clause excepting them from liability for negligence on the part of any of their servants.

Held, that in the absence of a *bond-side* alternative rate for the carriage of the cargo, such a condition was void as being unreason-

able within the meaning of section 7 of the Railway and Canal Traffic Act, 1854.—*RIGGALL v. GREAT CENTRAL RAILWAY, K.B.D.*, 716.

6. *Bill of lading and charter-party—Construction—Freight and dead freight—Lien for—Liability of bill of lading owners and receivers of cargo.*—The defendants were receivers of cargo and holders of bills of lading in respect of a cargo carried by the plaintiff's ship. The bill of lading contained a clause "rate of freight as per charter-party." The charter-party gave an option to ship "other lawful merchandise," in which case "freight to be paid on steamer's dead-weight capacity, for wheat or maize in bags on this voyage at the rates above agreed as for heavy grain, but steamer not to earn more freight than she would if loaded with a full cargo of wheat and / or maize in bags." The vessel left the port of loading when only half full, owing to the fact that the charterer could provide no further cargo, as he had become insolvent. The defendants contended that all they were bound to pay was 12s. per ton on 2,240 lbs. gross weight delivered, but the plaintiffs claimed payment on a lump sum basis.

Held, that the plaintiffs were on the construction of the bill of lading and charter-party only entitled to payment at the rate of freight at 12s. per ton gross weight delivered.—*RED "R" STEAMSHIP CO. v. ALLATINI BROS., K.B.D.*, 162.

7. *Charter-party—Exceptions—Deviation—Liability of owners.*—Where a ship deviates from the voyage contemplated by the charter-party, the shipowners are not protected by exceptions from liability contained in the charter-party for damage to the cargo occurring either before or after such deviation, as they are then in the position of common carriers.—*INTERNATIONALE GUANO EN SUPERPHOSPHAATWERKEN v. ROBERT MACANDREW & CO., K.B.D.*, 504.

8. *Charter-party—Lien—Dead freight—Demurrage—Charges.*—A charter-party provided that "the owner or master of the vessel shall have an absolute lien and charge upon the cargo and goods laden on board for the recovery and payment of all freight, demurrage, and all other charges whatsoever."

Held, that on the true construction of the words "all other charges whatsoever" dead freight was not included, and that "charges" meant sums paid in connection with the performance of the ship in loading the cargo, and were not necessarily confined to charges specified in the charter-party.

Held, also, that demurrage payable in advance may be subject to a lien.—*"SUPERIOR" OWNERS v. DEWAR & WEBB, K.B.D.*, 358; 1909, 1 K. B. 948.

9. *Charter-party—"Strikes, lockouts, civil commotions, or any other causes or accidents"—Ejusdem generis.*—A charter-party contained the following clause: "In case of strikes, lockouts, civil commotions, or any other causes or accidents beyond the control of the consignees which prevent or delay the discharging, such time is not to count unless the steamer is already on demurrage." At the port of discharge the steamer was delayed on account of shortage of labour, following an outbreak of plague and precautions of a sanitary nature.

Held, that the cause of the delay was not a "cause or accident," *ejusdem generis* with "strikes, lockouts or civil commotions."

*Tillmanns v. Knutsford* (1908, 2 K. B. 385) followed.—*MUDIE & CO. v. STRICK, K.B.D.*, 400.

10. *Collision—Sound signals—Breach of regulations—Liability of infringing ship—Regulations for Preventing Collisions at Sea, arts. 18, 28.*—Two steamships approaching each other end on, or nearly end on, collided. Five minutes before the collision occurred *The Malin Head* was seen by those on board *The Corinthian* to be porting. When *The Malin Head* first ported she sounded one short blast and then steadied, and shortly afterwards hard-a-ported, but did not sound her whistle. Held, by Bargrave Deane, J., that the failure to sound her whistle when she hard-a-ported, as required by article 28 of the Regulations for Preventing Collisions at Sea, could have had no effect on, and was, therefore, not a contributing cause to, the collision; and that, notwithstanding this breach of the article, *The Corinthian*, which had committed herself to a starboard helm, although those on board had seen and appreciated that *The Malin Head* was porting her helm, was alone to blame (25 Times L. R. 330).

Held, that the order of Bargrave Deane, J., should be varied by pronouncing both vessels to blame; as *The Malin Head* had committed a breach of article 28, she could not be wholly exonerated from liability.

Rule laid down in *The Duke of Buccleuch* (1891, A. C. 310) followed; decision in *The Bellanoch* (1907, A. C. 269) considered.—*"CORINTHIAN," THE, C.A.*, 650.

11. *Foreign ship sailing under English flag—Decree of forfeiture—Jurisdiction of court not within the dominions of the Crown—Limitation of jurisdiction.*—A ship, the property of

the appellants, a Russian syndicate, was claimed by the British Consular officer at Shanghai on the ground that she was improperly flying the British flag. The Supreme Court for China and Korea at Shanghai declared the vessel forfeited on this ground. The appellants contended that the jurisdiction to entertain and deal with petitions before the Supreme Court, if it possessed that jurisdiction, depended upon section 76 (1) of the Merchant Shipping Act, 1894, which section did not confer authority upon any court excepting those within the dominions of the Crown, and that, the Court of Shanghai not being within British territory, there was no jurisdiction to decree confiscation of the ship.

Held, that the contention of the appellants must prevail, and that the decree ought to be set aside as having been made without jurisdiction.—*"MAORI KING" v. CONSUL-GENERAL AT SHANGHAI, C.A.*, 519.

12. *Lightermen—Contract—"Reasonable precautions"—Exemption from "Any loss or damage, including negligence, which can be covered by insurance"—Negligence and liability of lightermen.*—The defendants, who are lightermen, agreed with the plaintiffs to transship a cargo of rosin from one ship to another on the terms that "every reasonable precaution is taken for the safety of the goods whilst in craft," and that they (the defendants) "will not be liable for any loss or damage, including negligence, which can be covered by insurance." Portions of the cargo were lost and damaged through the negligence of the defendants.

Held, that these terms were ambiguous, and might reasonably be read by shippers as an express promise that every reasonable precaution would be taken, and did not, therefore, exempt the defendants from liability.—*ROSIN AND TURPENTINE IMPORT CO. v. JACOBS, K.B.D.*, 304.

See also Master and Servant.

#### SLANDER:—

1. *Privilege and fair comment only pleaded in defence—Interrogatories.*—The defendant, while acting as chairman of certain licensing justices, made statements concerning the plaintiffs, who were brewers, reflecting on the conduct of their business. The defence pleaded was (1) that, as the words were spoken by the defendant in his capacity of chairman, the occasion was privileged, and (2) fair comment. The defendant administered certain interrogatories with the view of establishing the truth of the alleged facts on which his comment was based. The master allowed all the interrogatories, but the judge at chambers struck them all out on the ground that, as justification was not pleaded, they were oppressive.

Held, that the defendant was entitled to administer such of the interrogatories as went to establish whether the facts on which he had based his comment were true or untrue, as the onus of proving that the words complained of were fair comment on a matter of public interest rested on him.—*PETER WALKER & SONS v. HODGSON, C.A.*, 81; 1909, 1 K. B. 239.

2. *Speech by guardian referring to conduct of assistant overseer—Overseer—Privilege—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 62.*—A speech made by a member of a board of guardians at a meeting of the board with reference to the proper collection of the poor rate in a parish in their union by an assistant overseer is privileged.—*MAFEY v. BAKER, C.A.*, 429.

#### SMALL HOLDINGS:—

*Compulsory acquisition of—Order of county council—Confirmation by Board of Agriculture and Fisheries—Appeal—Small Holdings and Allotments Act, 1908 (8 E.I. 7, c. 36), ss. 7, 39 (3), 41.*—An order of a county council for the compulsory acquisition of land under the Small Holdings and Allotments Act, 1908, which has been confirmed by the Board of Agriculture and Fisheries, is final, and has the effect of an Act of Parliament. *Certiorari*, therefore, will not be granted by the Court of King's Bench to bring up and quash such an order.—*RINGER, EX PARTE, K.B.D.*, 745.

#### SOLICITOR:—

1. *Lien—Companies winding up—Winding up by order of the court—Change of solicitors pending suit—Discharge by liquidator of solicitor retained by the company—Right of discharged solicitor to detain papers obtained before winding up against payment of his costs—Liquidator's rights as to papers received by the solicitor after winding up.*—A liquidator of a company which is being wound up by order of the court has no better right to papers obtained by the company's solicitor before the winding up than the company. *Aliter*, where the solicitor has obtained the papers after the winding up order. Therefore, where a company instituted proceedings which were pending when the company was ordered to be wound up, and the liquidator took away the conduct of the proceedings from the solicitor, held, that the solicitor had the right to retain the company's papers obtained before winding up against his costs, but the



papers received by him after the winding up were ordered to be delivered up. Cases on solicitors' lien discussed.—RAPID ROAD TRANSIT CO., *RE, Neville, J.*, 83; 1909, 1 Ch. 96.

2. *Misconduct—Knowingly permitting unqualified person to use name—Denial of all knowledge of the fact by solicitor—Inference based on suspicion or supposition—Discretion as to striking off roll—Suspension—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 32.*—Where a solicitor knowingly permits an unqualified person to use his name contrary to section 32 of the Solicitors Act, 1843, the court has no discretion to inflict a less punishment on the solicitor than that of striking him off the roll. So held by the Divisional Court, following *Re Kelly* (1895, 1 Q. B. 180). But where on appeal the solicitor denies that he in fact knew what was being done by the unqualified person, the inference to be drawn from the solicitor's conduct to the contrary gives the court a discretion, as the proceedings against the solicitor being of a quasi-criminal character, such a charge cannot be held to be established on suspicion or supposition, and the court in that case has discretion to punish the offence by suspension.—Two SOLICITORS, *RE, C.A.*, 342.

3. *Remuneration—“Preparing, settling, and completing lease and counterpart”—Part only of this work done—Scale fee—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 27—Solicitors' Remuneration Order, 1882, Schedule I., Part II.*—A solicitor who has done part only of the work entitling him to the scale fee under Part II. of Schedule I. of the Solicitors' Remuneration Order, 1882, must deliver a bill a month before bringing an action for his costs, particularizing the items of work and disbursements, pursuant to section 37 of the Solicitors Act, 1843.—*LOMAS v. JOSEPH, K.B.D.*, 271.

4. *Taxation—Application to tax within one month after delivery of bill—Submission to pay—Common order to tax—Form of order—Exclusion of statute-barred items—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 7.*—Where a client applies for taxation within one month after delivery of a bill of costs, and does not claim delivery up of papers, no submission to pay ought to be inserted in the order for taxation. But where a submission to pay is required, the submission should be to pay only what is certified as payable, by which is meant recoverable having regard to (*inter alia*) the Statute of Limitations, and the order should direct the taxing-master to certify where necessary what is due, as distinct from payable, with a view to ascertain the amount for which there is a lien.—*BROCKMAN, RE, C.A.*, 577; 1909, 2 Ch. 170.

5. *Taxation—Counsel's fee for settling notice of appeal—Trustee's accounts—Accountant's charges—R. S. C. LXV. 27 (15).*—A fee to counsel for settling a notice of appeal will be allowed on taxation, even though the notice is in common form.—*BAILEY, RE, BAILEY v. BAILEY, Eve, J.*, 522.

6. *Taxation—Light Railways Act, 1896—Provisional order—Parliamentary or Chancery scale—Charges before retainer—Deposit of plans.*—The costs of and connected with the preparation and making of a provisional order under the Light Railways Act, 1896, are taxed on the Chancery, and not the Parliamentary, scale.

*Semble*, the deposit of plans ought to be made by post, and the cost of personal service will not be allowed, except under special circumstances.—*P. (A SOLICITOR), RE, Eve, J.*, 617; affirmed on first point, 735.

7. *Taxation—Petition of course—Order discharged.*—A client obtained an order for taxation of his solicitor's bill of costs by presenting a petition of course. It appeared subsequently that there was a dispute as to the facts between him and his solicitor affecting his right to have the order.

Held, that he ought to have proceeded by way of special application.—*C. (A SOLICITOR), RE, Warrington, J.*, 616.

8. *Taxation—Special agreement—Cash account—Solicitors' Remuneration Act, 1881, s. 18 (1) (4).*—On a common order to tax a solicitor's bill of costs the taxing-master has no jurisdiction to include in such taxation an item in an account headed “Cash Account,” representing work done under a special agreement.—*T. & C. (SOLICITORS), RE, C.A.*, 672.

9. *Taxation—Three counsel—Co-defendants—Expert evidence—Costs of uncalled witnesses—R. S. C. LXV. 27 (29).*—The costs of three counsel will be allowed on a party and party taxation in a case where there are special complications, even though the interests of the defendants separately represented are identical and they act in combination in defending the action.

The costs of expert witnesses will be allowed in a proper case even though they are not called at the trial.—*GREAT WESTERN RAILWAY v. CARPALLA UNITED CHINA CLAY CO. (No. 2), Eve, J.*, 699.

10. *Taxation after payment—Costs paid under pressure—Payment under protest—Special circumstances—Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 38, 41.*—The respondent, as solicitor for a lessor, refused

to hand over an executed counterpart of an agreement for a lease, and threatened to let the land to parties other than the lessee unless his costs as such solicitor were paid. The lessee's solicitors were willing to pay the costs subject to the determination of a question whether these were to be itemized or upon scale fees. Ultimately, the respondent insisting on his item costs in full before completion, the lessee's solicitors paid them under protest, and two days afterwards issued a summons for taxation.

Held, that there were special circumstances in which taxation would be ordered although the costs had been paid. Observations on acceptance of moneys paid under protest.—*R. E. F. (A SOLICITOR), RE, Neville, J.*, 83.

11. *Taxation after payment—Special circumstances—Alleged overcharges—Discretion of judge.*—The mere fact that some of the items of a solicitor's bill of costs might be reduced on taxation is not a special circumstance which will justify the court in ordering taxation of the bill after payment.—*GALE & KILNER v. LINLEY, C.A.*, 198.

12. *Taxation after payment—Special circumstances—Mistake in scale charges—Scale charges where work not all done—Solicitor acting for purchaser—Mortgagor and mortgagee—Conveyance and mortgage completed at the same time—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 41—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), General Order, Schedule I., rr. 3, 6, and 11.*—A solicitor delivered a bill of costs (which was paid) containing overcharges due to a mistake as to the proper scale charges and to scale charges for work which was not all done.

Held, that the overcharges in themselves were sufficient to have the bill referred for taxation.—*G. (A SOLICITOR), RE, Neville, J.*, 469.

13. *Taxation after payment—Special circumstances—Payment reserving rights—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 31.*—The applicants, in order to get possession of papers which were necessary to complete a mortgage transaction, paid their solicitors' bill of costs under protest and reserving their rights. On an application to tax the bill,

Held, that the payment did not preclude taxation, as there were special circumstances within the meaning of section 41 of the Solicitors Act, 1843.—*LEGGATTS & CARRUTHERS, RE, Eve, J.*, 84.

14. *Taxation after payment—“Special circumstances”—Reservation of right to tax—Pressure—Overcharges—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 41.*—The reservation of a right to tax on payment of a bill of costs does not, standing alone, amount in all cases to a special circumstance within the meaning of section 41 of the Solicitors Act, 1843; but, taken together with other circumstances, such as overcharges, it may give rise to a right to tax after payment.—*T., RE, Eve, J.*, 487.

15. *Taxation—Mortgagee's costs—Copies of deeds in possession of mortgagee as tenant for life—Mortgagee taking possession—Notices to tenants—Charges for drawing notices.*—A mortgagee who obtains possession of deeds as tenant for life is entitled to hold them as mortgagee.

Where a mortgagee takes possession and serves the tenants with notice he is not entitled to charge for drawing more than one notice.—*TWEEDIE'S TAXATION, RE, Eve, J.*, 118.

16. *Taxation—Vouchers—Delivery up of documents—Vouchers for payments on behalf of client—Property in documents held by agent—Taxation of costs—Retainer of client's moneys as payment more than a year before application to tax—Waiver of delivery of bill—Solicitors Act, 1848 (6 & 7 Vict. c. 73), s. 41.*—Solicitors retained the amount of their bills of costs against R. A., a young man, out of moneys in their hands belonging to him. Shortly afterwards R. A. ceased to employ the solicitors, who told him that they had closed their accounts with him, but that their accounts were open to his inspection. Neither accounts nor bills of costs were delivered to him. Upon a claim three years afterwards by the trustee in bankruptcy of R. A. against the solicitors for delivery up of vouchers for payments stated by them to have been made on behalf of R. A., and for taxation of the bill of costs,

Held, that, the vouchers being the property of the bankrupt, his trustee in bankruptcy was entitled to them without releasing the solicitors from accounting for the payments, and that in the absence of any waiver of delivery the bills must be taxed.—*F. & E., RE, Neville, J.*, 32.

17. *Undertaking by—Disciplinary jurisdiction of the court—Personal undertaking.*—An undertaking by solicitors (defendants) in these terms: “In consideration of you (plaintiffs' solicitors), on behalf of your clients, agreeing to the proceedings . . . being adjourned for one week . . . we on behalf of our clients undertake to apply at the opening of the court for certain cross-summonses” and to pay to you on behalf of your clients whatever balance may be adjudged by the magistrate to be due to your clients,” is a personal undertaking by the solicitors, for if it were

not so the undertaking would mean nothing, the clients being liable by the order of the magistrate.—*C. & Co., Re, K.B.D.*, 119.

**SPECIFIC PERFORMANCE.**—See Vendor and Purchaser.

#### TELEGRAPH:—

*Telephones—Postmaster-General—Exemption from exclusive privilege—Telegraph “used solely for private use”*—“Maintained for the private use of” a person—*Telegraph Act, 1869 (32 & 33 Vict. c. 73), ss. 4, 5.*—The exception relating to private telegraphs contained in section 5 of the *Telegraph Act, 1869*, does not apply where the private wire is frequently used by persons other than the owner, although no charge be made by the owner for the use of it by such persons.

Decision of the Court of Appeal (1908, 2 Ch. 172) reversed.—*POSTMASTER-GENERAL v. NATIONAL TELEPHONE CO., H.L.*, 429; 1909, A. C. 269.

#### TRADE MARK:—

1. “*Calculated to deceive*”—*Trade-Marks Act, 1905 (5 Ed. 7, c. 15), s. 11.*—The use of a shamrock as a trade-mark for goods made in England is “calculated to deceive” within section 11 of the *Trade-Marks Act, 1905*.—*McGLENNON’S TRADE-MARK, Re, Warrington, J.*, 14.

2. *Geographical name—Special application for registration—Distinctive mark—Mark already registered for similar goods—Trade-Marks Act, 1905 (5 Ed. 7, c. 15), s. 9.*—“*Oswego*” held to be a distinctive mark for cornflour or prepared corn.—*NATIONAL STARCH CO.’S TRADE-MARK, Re, Warrington, J.*, 13; 1908, 2 Ch. 698.

3. *Registration—“Distinctive mark”—Name of well-known physician—Trade-Marks Act, 1905 (5 Ed. 7, c. 15), s. 9 (5).*—From the year 1881 the applicants, who were manufacturers, used, with his consent, the name of a well-known physician as a trade-mark for a class of bedsteads which they made and sold, they paying to the physician a royalty on every bedstead sold down to his death in 1899, and afterwards to his widow. The name was only used in connection with these particular bedsteads, and no others.

Held, that the name was a “distinctive mark” within the meaning of section 9 (5) of the *Trade-Marks Act, 1905*, and ought to be registered.—*WHITFIELDS BEDSTEADS (LIMITED) TRADE MARK, Re, Eve, J.*, 598.

4. *Registration—Invented word—Distinctive mark—User—Trade-Marks Act, 1905 (5 Ed. 7, c. 15), ss. 9 (5), 31, 36.*—The word “*Orlwoola*” used in connection with woollen goods is not an invented word, but by actual user extending over more than twelve years it had become identified with the respondents’ goods, and therefore was registrable as a distinctive mark under the *Trade-Marks Act, 1905*.—“*ORLWOOLA*” *TRADE-MARK, Re, Eve, J.*, 672.

#### TRADE UNION:—

1. *Branch union—Secession of branch—Trustees of branch funds—Trustees of union—Action to restrain misapplication of funds—Payments over—Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 4.*—An action by the trustees of a trade union to restrain the trustees of a seceding branch of the trade union from applying the branch funds otherwise than in accordance with the rules of the union is not a legal proceeding instituted with the object of directly enforcing an agreement for the application of the funds of the union to provide benefits to members within section 4 of the *Trade Union Act, 1871*.—*COPE v. CROSSINGHAM, C.A.*, 559; 1909, 2 Ch. 148.

2. *Mutual insurance society—Rules of society—Action against society by member—Trade Union Act, 1871 (34 & 35 Vict. c. 31), ss. 4, 23—Trade Union Act, 1876 (39 & 40 Vict. c. 22), s. 16.*—A society which is really a mutual insurance society against sickness and loss of wages from any cause, whether shortness of work or voluntary abstention of work, does not become a trade union, and, consequently, an unlawful body, either because it calls itself a trade union or because its rules provide for the receipt of strike pay by its members. A member, therefore, can bring an action against such a society to enforce its rules; and even if one rule were in restraint of trade and therefore illegal, it would not prevent the court from exercising jurisdiction for a breach of other rules not open to that objection.—*GOSNEY v. BRISTOL, WEST OF ENGLAND AND SOUTH WALES PROVIDENT SOCIETY, C.A.*, 341; 1909, 1 K. B. 901.

3. *Parliamentary representation—Objects of union—Ultra vires—Rules—Certificate of registrar—Trades Union Acts, 1871 and 1876 (34 & 35 Vict. c. 31; 39 & 40 Vict. c. 22).*—A trade union registered under and claiming the benefits of the *Trade Union Acts* is not at liberty to add to the objects indicated in the statutory definition of trades union and the other provisions of these Acts any other object which is not in itself illegal. It is,

therefore, *ultra vires* a trade union to employ its funds to provide for the Parliamentary representation of its members, such an object being wholly distinct from the objects contemplated by the *Trades Union Acts*. There is nothing in the *Trades Union Acts* to make the registrar’s certificate conclusive evidence of the validity of the rules. Consequently, a rule, which is *intra vires* the union but is not passed in accordance with the provisions of the rules, is not made valid by the registrar’s certificate.—*OSBORNE v. ALMALGAMATED SOCIETY OF RAILWAY SERVANTS, C.A.*, 98; 1909, 1 Ch. 163.

4. “*Trade dispute*”—*Act done in contemplation or furtherance of a trade dispute—Non-payment of fine to union—Threat to employer—Trades Disputes Act, 1906 (6 Ed. 7, c. 47), s. 3.*—In 1903 the plaintiff, a member of a trade union, was fined 10s. for a breach of the union rules: this fine was not paid. In 1907 the plaintiff joined another branch of the union. The defendant, who was the district delegate of the union, at the instigation of some of the plaintiff’s fellow-workmen, who knew of the unpaid fine, and of the treasurer of the branch of the union which had imposed the fine, went to the foreman of the plaintiff’s employers and procured the plaintiff’s dismissal by threats that unless this was done the other union men would leave off work. In an action in the county court against the defendant to recover damages for procuring the plaintiff’s dismissal, the jury found that there was not a trade dispute existing or contemplated by the men; that what the defendant did prevented or was intended to prevent the plaintiff from getting or retaining employment; that it was done to compel the plaintiff to pay and to punish the plaintiff for not having paid the fine; that what the defendant did was not done only to warn the plaintiff’s employer that the union men would leave in consequence of their being unwilling to work with the plaintiff, and that it was not done in consequence of their objecting to work with him, and that the defendant did something more than act on behalf of the men employed by the plaintiff’s employers. Judgment for the plaintiff was entered for £50. The Divisional Court upheld that decision. The Court of Appeal held, however, that the words “in contemplation or furtherance of a trade dispute” in section 3 of the *Act of 1906* were perfectly general, and that upon the findings judgment should be entered for the defendant. The plaintiff appealed.

Held, that as the words “an act done in contemplation or furtherance of a trade dispute” in section 3 must logically mean either that a trade dispute was imminent and the act was done in expectation and with a view to it, or that the dispute was actually existing and the act was done in support of one side of it; the defendant, on the facts, was not protected by the section and was liable in damages.

Decision of the Court of Appeal (reported 52 SOLICITORS’ JOURNAL, 748; 1908, 2 K. B. 844, 78 L. J. K. B. 14) reversed.—*CONWAY v. WADE, H.L.*, 754.

#### TRAMWAY:—

1. *Duty of tramway promoters—“Maintain and keep in good condition and repair”—Removal of snow from tramway—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 28.*—The promoters are not bound under section 28 of the *Tramways Act, 1870*, to remove snow which has fallen upon their tramways.—*ACTON URBAN DISTRICT COUNCIL v. LONDON UNITED TRAMWAYS, K.B.D.*, 62; 1909, 1 K. B. 68.

2. *Municipal corporation—Obligation to carry passengers—Condition limiting liability.*—A municipal corporation who had acquired and were working a tramway undertaking under statutory powers put up a notice in their tramcars that their liability in respect of any accident to a passenger was limited to £25, and the tramway tickets contained a notice to the same effect. A member of the public having met with an accident caused by the negligence of the corporation’s servants,

Held, that the corporation, being under a statutory duty to carry any member of the public who desired to travel by a car, were not entitled to limit their liability for negligence.—*CLARKE v. WEST HAM CORPORATION, C.A.*, 731.

#### TRUSTEE:—

*Public trustee—Proposed appointment of Public Trustee in place of retiring trustees of a settlement.*—Trustees who desire to retire ought only to resort to the *Public Trustee Act, 1906*, and appoint the *Public Trustee* in their place, if there is no other way out of the difficulty. Before doing so they should try to obtain some member of the family to accept the trust.—*HOPE-JOHNSTONE’S SETTLEMENT TRUSTS, Re, Parker, J.*, 321.

See also Vendor and Purchaser.

**UNDUE INFLUENCE.**—See Husband and Wife.



## VENDOR AND PURCHASER:—

1. *Right to rescind—Premises described as freehold—Incumbrance apparent on title not disclosed in particulars—Condition reserving right to rescind if purchaser insists on requisitions—Innocent misrepresentation—Recklessness or unreasonable conduct or vendor—Requisition involving expense.*—The applicants purchased certain premises for £300 at a sale by auction from the respondents. The premises were described in the particulars as freehold and without mention of incumbrances. The premises were in fact subject to a rent-charge of £5 7s. 9d., as might have been discovered by the respondents on any examination of their title. By the conditions of sale it was (*inter alia*) provided that each lot was sold subject to all chief rents, that the vendors might be at liberty to rescind the sale if the purchasers insisted on any objection or requisition which the vendors might be unwilling to remove or comply with; and that any incorrect statement, error, or omission should not annul the sale or entitle either the vendors or the purchaser to any compensation. The applicants insisted upon the respondents discharging the incumbrance, and thereupon the respondents claimed to rescind the sale.

Held, that the respondents had acted honestly under a mistake, and not recklessly or unreasonably, and had done nothing to disentitle them to rescind.—*SIMPSON AND MOY'S CONTRACT, RE, Joyce, J., 376.*

2. *Specific performance—Agent—Excess of authority—Contract by letters—Subject to approval of formal contract.*—It is not every excess of authority by an agent that will vitiate a contract, and where such excess is not unreasonable it will not operate to prevent specific performance of the contract.

Where an agreement by letters is made "subject to" the approval of a formal contract, there is no concluded contract until such formal contract has been approved. *Secus*, where the stipulation is not conditional, but merely supplemental.

*Winn v. Bull* (7 Ch. D. 29) followed.—*BROMET v. NEVILLE, Eve, J., 321.*

3. *Specific performance—Freeholds subject to restrictive covenants—Constructive notice—Duty of vendor to disclose—Return of deposit.*—Where a vendor of freehold property mentioned to the purchaser that the property was subject to the same conditions as the adjoining property,

Held, that the purchaser was not fixed with constructive notice of restrictive covenants, and therefore specific performance was refused.

Property described in a contract for sale as "freehold" means unincumbered freehold, and such a description does not properly describe freeholds subject to restrictive covenants.

There is an obligation on a vendor of freeholds to disclose restrictive covenants, and if he does not disclose them, the purchaser is entitled to a return of his deposit.—*HONE v. GAKSTATTER, Eve, J., 286.*

4. *Will—Trustee's power of sale, determination of—Property "at home."*—A power of sale of real estate given to trustees is not extinguished until all the purposes for which it was originally created have ceased to exist, and those purposes may include the payment of annuities charged upon the real estate in aid of the personal estate.

*Wolley v. Jenkins* (5 W. R. 281, 23 Beav. 53, 28 L. T. 362) distinguished.—*KAYE AND HOYLE'S CONTRACT, RE, Warrington, J., 520.*

## WATER:—

1. *Artificial watercourse—Origin unknown—Rights of riparian owners—Right to flow of water—Presumption.*—Where an old artificial watercourse passes through the land of several proprietors and there is no evidence as to the terms on which the watercourse was originally constructed, there is a presumption that each proprietor is entitled to use the water for all reasonable purposes. *Burrows v. Lang* (1901, 2 Ch. 502) distinguished.

The court will not refuse to make the presumption merely because it may impose a greater burden on one of the joint users than may have been contemplated when the watercourse was constructed.

*Rylands v. Fletcher* (L. R. 3 H. L. 330) considered.—*WHITMORES (EDENBRIDGE) v. STANFORD, Eve, J., 134; 1909, 1 Ch. 427.*

2. *Water supply—Domestic purposes—Dwelling-house—School—Purposes of trade or business.*—A waterworks company's special Act provided that the company should, at the request of occupiers of houses, furnish them with a supply of water for domestic purposes at specified rates, but that the company should not be compelled to supply water to any dwelling-house otherwise than by agreement where any part of such house was used for any trade, manufacture

or business for which water was required. The company supplied water to the plaintiff's house, which was used as a boarding school.

Held, that the plaintiff was entitled to be supplied with water at the rate specified for the supply of water for domestic purposes.—*FREDERICK v. BOGNOR WATER CO., Eve, J., 31; 1909, 1 Ch. 149.*

See also *Education, Landlord and Tenant.*

## WILL:—

1. *Codicils—Republication—Meaning of "Persons to whom I have given legacies"—Institutions that have "ceased to exist"—Volunteer units—Territorial and Reserve Forces Act, 1907—County associations—Charitable bequest.*—Where a will and seven codicils were republished, under the old law, by an eighth codicil, and even without such confirmation, the description "persons and institutions to whom and to which I have given pecuniary legacies" in the first codicil was held to cover pecuniary legatees under the will and all the codicils.

*Re Champion* (1893, 1 Ch. 101) explained and followed.

Bequests for the benefit of volunteer, yeomanry, and militia units enure for the benefit of the corresponding territorial and special reserve units established under the Territorial and Reserve Forces Act, 1907, and in the case of the territorial units must be paid over to the proper county associations. A bequest to the officer commanding a battalion "for the mess of that regiment, or for the poor of the regiment" is a good charitable bequest.—*DONALD, RE, MOORE v. SOMERSET, Warrington, J., 673.*

2. *Construction—General direction to pay annuities out of income—Gift over "subject to aforesaid annuities"—Deficiencies of income—Charge on corpus.*—A general direction in a will to pay annuities out of income, followed by a disposition of the estate subject to the annuities, charges the annuities upon the corpus of the estate.—*HOWARTH, RE, HOWARTH v. MAKINSON, C.A., 519.*

3. *Conversion—Proceeds of realty sold under a power—Accumulations of income directed beyond the legal limit—Failure of purpose directed as to income interest—Resulting trust in favour of heir-at-law—Thellusson Act (39 & 40 Geo. 3, c. 98).*—A testator devised real estate to his trustees, with a power of sale, upon trust to accumulate the rents and income until his son should attain the age of twenty-five years. The trustees sold the real estate and invested the proceeds in personal property. The son had not attained the age of twenty-five years at the expiration of the statutory period allowed for accumulations.

Held, that, an intestacy having occurred as to the income between the statutory period and the date when the son would attain twenty-five years of age, the income resulted to the son as heir-at-law.—*PERKINS, RE, BROWN v. PERKINS, Neville, J., 698.*

4. *Heirlooms—Bequest of chattels to go with settled land—Except articles not suitable for heirlooms—Right of selection in trustees.*—A testator bequeathed all his furniture and effects and articles of household or personal use and ornament at his residence, except such articles as his trustees should not consider suitable to be retained as heirlooms upon trust, to allow the same to be used by the person entitled to the possession of the settled land.

Held, that the court ought not to interfere with the decision of the trustees as to what articles were suitable to be retained as heirlooms.—*SMITH-BOSANQUET'S TRUSTS, RE, Eve, J., 430.*

5. *Legacies—General or specific—Gift of debenture stock "in" certain railways.*—A gift of "2,000 four per cent. debenture stock in the Argentine Great Western Railway" is a general and not a specific legacy where there is nothing in the context to prevent such a construction, and therefore it does not carry interest from the death of the testator.—*CURRY, RE, CURRY v. CURRY, Eve, J., 117.*

6. *Legacy—Duty—Payable out of residue—Time for payment of legacy—Interest on legacy from a year after testator's death.*—A testator directed his executors to pay all duties payable in respect of legacies or otherwise payable under his will, and directed them at any time to set apart and appropriate out of residue a sum of money upon trust for a charity.

Held, that the appropriated fund was liable to legacy duty, which was payable out of residue.

Held, also, that, there being no fixed time for payment, the fund carried interest at 4 per cent. from a year after the death of the testator.

The rule laid down by Lord Cairns in *Lord v. Lord* (L. R. 2 Ch., at p. 789) applied.—*WHITELEY, RE, WHITELEY v. BISHOP OF LONDON, Eve, J., 503.*

7. *Legacy—Specific legacy—Upkeep between death of testator and assent by executor—Liability of legatee.*—The cost of the up

keep of a specific legacy between the death of the testator and the assent by the executor must be borne by the specific legatee and not by the residuary estate.—PEARCE, RE, CRUTCHLEY v. WELLS, *Eve, J.*, 419.

8. *Legacy to infant — Advancement clause — Maintenance.*—A testatrix bequeathed a share in £3,000, part of her residuary estate, to an infant, directing that it should vest on his attaining the age of twenty-one. The will empowered the trustees to apply this share for the advancement "or otherwise

for the benefit" of the infant, but contained no express power of maintenance.

Held, following *Pett v. Fellows* (1 Swans. 561n), as explained in *Leslie v. Leslie* (L.L. & G. t. Sugden 1), that the will contained sufficient evidence of the testatrix's intention to maintain to justify the trustees in applying the interest at 4 per cent. on the infant's share towards his maintenance.—CHURCHILL'S ESTATE, RE, *Warrington, J.*, 697.

See also Appointment.

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